

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,221

LEROY STEPHENS,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

825

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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(i)

STATEMENT OF QUESTIONS PRESENTED

1.

Whether the court erred in denying appellant's Motion to Suppress Evidence before trial on the ground that appellant, in his affidavit, did not allege ownership of the property, but admitted that the property was seized from his person.

2.

Whether the trial court erred in denying appellant's Motion to Suppress Evidence renewed at the beginning of the trial solely because the pre-trial judge denied the same motion.

3.

Whether, in the instance where police officers are executing a search warrant for premises, a private dwelling, upon entering the premises see no evidence of the operation of a lottery and prior to conducting a search of the premises arrest and search the person of appellant, who was unknown to the officers and about whom they had no previous information, renders the arrest and search of the person of the appellant illegal as being in violation of his rights under the Fourth and Fifth Amendments of the United States Constitution.

4.

Whether the trial court erred in denying appellant's Motion for a New Trial on the ground that property seized from the appellant should not have been admitted into evidence as the arrest and search of the appellant was in violation of his rights under the Fourth and Fifth Amendments of the United States Constitution.

(iii)
INDEX

	<u>Page</u>
JURISDICTIONAL STATEMENT	1
STATEMENT OF THE CASE	2
THE STATUTES AND RULES INVOLVED	5
STATEMENT OF POINTS	6
SUMMARY OF ARGUMENT	7
ARGUMENT:	
I. The Court Erred In Denying Appellant's Motion To Suppress Evidence On The Grounds Of An Unreasonable Search And Seizure Before Trial	9
II. The Trial Court Erred In Denying Appel- lant's Motion To Suppress Evidence On The Grounds Of An Unreasonable Search And Seizure Renewed At The Beginning Of The Trial Because The Pre-Trial Judge Had Also Denied The Same Motion	10
III. The Trial Court Erred In Admitting Into Evidence Property Seized From The Ap- pellant As A Result Of An Unlawful Arrest, Unlawful Search And Seizure, Under The Circumstances Of This Case	11
IV. The Trial Court Erred In Denying Appellant's Motion For A New Trial On The Grounds That Property Was Admitted Into Evidence Which Was Seized From The Appellant As A Result Of An Unreasonable Search And Seizure	15
CONCLUSION	16

TABLE OF CASES

Brandon v. United States, ___ U.S. App. D.C. ___, ___ F. 2d ___	9
Christensen v. United States, ___ U.S. App. D.C. ___, 259 F. 2d 192	15
Harvey v. United States, 90 U.S. App. D.C. 167, 193 F. 2d 928	9
Hicks v. United States, 150 U.S. 442, 14 S. Ct. 144, 37 L. Ed. 1137	13
McDonald v. United States, 335 U.S. 451, 69 S. Ct. 191, 93 L. Ed. 153	14

(iv)

TABLE OF CASES
(Cont'd.)

	<u>Page</u>
United States v. DiRe, 332 U.S. 581, 68 S. Ct. 222 92 L. Ed. 210	11, 14, 15
United States v. DiRe, 159 F. 2d 818	12, 13
United States v. Williams, 341 U.S. 58, 71 S. Ct. 581, 95 L. Ed. 747	13
Williams v. United States, 99 U.S. App. D.C. 161, 237 F. 2d 789	14
Wyche v. United States, 90 U.S. App. D.C. 67, 193 F. 2d 703	10, 13

IN THE
UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 15, 221

LEROY STEPHENS,

Appellant,

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UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under Section 1291 of Title 28 of the United States Code, and Rule 37 of the Federal Rules of Criminal Procedure.

STATEMENT OF THE CASE

Appellant was named in three counts of a sixteen count indictment, along with three other persons, charging violation of the lottery laws of the District of Columbia. (JA 2).

Prior to trial, appellant filed a timely Motion To Suppress Evidence on the ground of an unreasonable search and seizure and attached to his motion was the affidavit of appellant stating among other things that certain described articles were seized from appellant's persons by members of the Metropolitan Police Department, Morals Division, Gambling and Liquor Squad. (JA 6, 7).

On December 12, 1958, a hearing was held on appellant's Motion To Suppress before the United States District Court for the District of Columbia. Before appellant could put on any testimony in support of his motion, counsel for the Government raised issue with the fact that the appellant did not allege ownership in the property seized or in the premises. (JA 8). The Court agreed with counsel for the Government and stated that unless appellant expected to prove ownership of the premises or the property the motion would be denied. (JA 9). Counsel for appellant argued that it could not allege ownership, but was going on the theory of possession in that appellant's rights were violated as he was searched and property was removed from him. (JA 9). The Court denied the motion. (JA 9).

On the day of the trial in the District Court and after counsel for the Government made his opening statement, counsel for the appellant renewed his Motion To Suppress Evidence before the Trial Court. (JA 10). The Trial Court ruled that it was going to be guided by the ruling made by the Judge who had heard the Motion before trial. (JA 11). However, the Trial Court did not preclude appellant from further objection to evidence during the trial. (JA 11).

The Government introduced the following evidence: commencing on April 28, 1958, one Ellsworth Dory of the Metropolitan Police Department

assigned to the Gambling and Liquor Squad of the Morals Division made contact with one Moses Taylor, a co-defendant with appellant, at 1235 E Street, N. E., Washington, D.C. and for a period of several days between April 28 to July 9, 1958, Dory placed numerous numbers bets with Taylor at the E. Street address.

Commencing on June 2, 1958, Officers Julius Durham and Samuel E. Carter of the Metropolitan Police Department, Gambling and Liquor Squad, began their investigation of premises 1235 E Street, N. E. Washington, D.C. and for a period of several days between June 2, and July 9, 1958, Officers Durham and Carter observed Taylor depart from the E Street address with "bulging pockets" and go to addresses 209 P Street, N.W., 225 Bates Street, N. W. and finally enter premises 1547 Third Street, N. W. by the rear and leave the Third Street address "minus the bulge." The officers observed other unidentified persons entering and leaving the Third Street address during the same days.

Commencing on June 16, 1958, Officers Durham and Carter observed one, Henry T. Venson, a co-defendant with appellant, enter premises 1547 Third Street, N. W. carrying a brown paper bag, remain about 10 minutes and leave the premises still carrying the paper bag which appeared to be larger. For a period of several days between June 16 to July 9, 1958, the same Venson was seen entering and leaving the Third Street premises with a paper bag. All of the observations of Durham and Carter took place between approximately 12:45 P.M. to 2:30 P.M. on the several days.

As a result of the investigation of Officers Dory, Durham and Carter, search warrants were obtained for premises 1235 E Street, N.E. Washington, D.C. and 1547 Third Street, N. W., Washington, D.C. and arrest warrants for Moses Taylor, Rebecca Davis, another co-defendant with appellant, and John Doe (later identified as Henry T. Venson) were obtained from the U.S. Commissioner for the District of Columbia on July 9, 1958.

On July 9, 1958, Officers William D. Foran, James B. Mills and Ward Foulkes, of the Metropolitan Police Department, Gambling and Liquor Squad entered the premises 1547 Third Street, N. W., Washington, D.C. for the purpose of executing the search warrant. (JA 19). They entered the premises at about 2:45 P.M. (JA 14). Lt. Foran testified that he knocked at the door of the premises and the knock was answered by a young girl. (JA 19). Foran further testified that he showed his police badge and notified the girl that he had a search warrant for gambling violation for the premises. (JA 20). He thereupon opened a screen door and the three officers entered the premises. (JA 20). Officer Foulkes remained at the front door and Officers Foran and Mills proceeded to the dining room off a hallway from the front entrance door where they observed appellant and another lady. (JA 19, 12). Appellant and the lady were proceeding into the kitchen at the time Foran and Mills observed them. (JA 20). Foran characterized appellant as hastily making exit through the kitchen door. (JA 20). Mills characterized appellant as going into the kitchen in a hurried way. (JA 12).

Appellant was arrested within a matter of seconds after the officers entered the premises. (JA 15). He was the first person detained and no search was made of the premises until after appellant was arrested. (JA 15). Officer Mills removed from appellant's person a nickel and a dime, two keys and some papers. (JA 12). The dining room was furnished with normal dining room furniture and nothing else was in sight. (JA 15). Officer Mills testified that he and the appellant did not see each other face to face until after appellant was stopped and arrested by Mills and Foran. (JA 16).

Officer Foulkes conducted the search of the premises proper some fifteen minutes after the entry by the officers and testified that he found assorted numbers paraphernalia in a closet in the dining room and on top of a kitchen cabinet. (JA 17, 19).

As far as appellant was concerned, he was unknown to the officers on July 9, 1958, (JA 15), there was no arrest warrant outstanding for him, (JA 15), and there was nothing unusual about the premises when the officers entered. Finally, no search and seizure was made of the premises until after appellant was arrested and searched. (JA 15).

Objections were made to the introduction of the property seized from appellant at the trial, which objections were overruled by the Court and the property was admitted into evidence against appellant. (JA 22, 23, 24, 25).

Appellant was acquitted by the jury of Count 1, of the indictment charging him with operating a lottery, Count 14. of the indictment charging him with maintaining gaming premises at 1547 Third Street, N. W., Washington, D.C., but was convicted of Count 16. of the indictment charging him with possession of numbers slips. (JA 1). A Motion For a New Trial was filed challenging again the legality of the search and seizure from appellant's person and the admission of property seized into evidence. (JA 32). Such motion was argued and denied by the Court and thereupon appellant was sentenced. (JA 38). Hence this appeal.

THE STATUTES AND RULES INVOLVED

Title 22, Section 1502 of the District of Columbia Code (1951 Edition, Supplement VII) reads as follows:

22-1502 (6:151a). Possession of lottery or policy tickets.

"If any person shall, within the District of Columbia, knowingly have in his possession or under his control, any record, notation, receipt, ticket, certificate, bill, slip, token, paper, or writing, current or not current, used or to be used in violating the provisions of sections 22-1501, 22-1504, or 22-1508, he shall, upon conviction of each such offense, be fined not more than \$1,000 or be imprisoned for not more than one year, or both.

For the purpose of this section, possession of any record, notation, receipt, ticket, certificate, bill, slip, token, paper, or writing shall be presumed to be knowing possession thereof. (Apr. 5, 1938, 52 Stat. 198, ch. 72, sec. 2; June 29, 1953, 67 Stat. 95, ch. 159, sec. 206.)"

Rule 41(e) of the Federal Rules of Criminal Procedure, reads as follows:

(e) Motion for Return of Property and to Suppress Evidence.

"A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefore did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing."

STATEMENT OF POINTS

I.

The Court erred in denying appellant's Motion To Suppress Evidence on the grounds of an unreasonable search and seizure before trial.

II.

The Trial Court erred in denying appellant's Motion To Suppress Evidence on the grounds of an unreasonable search and seizure renewed at the beginning of the trial because the pre-trial Judge had also denied the same motion.

III.

The Trial Court erred in admitting into evidence property seized from the appellant as a result of an unlawful arrest, unlawful search and unlawful seizure, under the circumstances of this case.

IV.

The Trial Court erred in denying appellant's Motion for a New Trial on the grounds that property was admitted into evidence which was seized from the appellant as a result of an unreasonable search and seizure.

SUMMARY OF ARGUMENT

1.

Appellant has standing on a Motion To Suppress Evidence made before trial, where in his affidavit in support of his motion he stated that property was removed from his person by police officers even though the affidavit does not admit ownership of the property seized or of the premises wherein he was searched, possession alone being enough to give appellant the right to challenge the legality of his arrest and the search of his person by police officers.

2.

The Trial Court should have considered appellant's Motion To Suppress Evidence renewed at the beginning of the trial wherein appellant's affidavit recites that property was seized from his person by police of-

ficers thereby giving appellant standing to challenge the legality of his arrest instead of relying on the ruling of the pre-trial Judge without more.

3.

The arrest without a warrant and the search of a person in premises in which police officers are executing a search warrant and in which premises upon entrance the officers saw no evidence of a lottery operation going on, violates the Constitutional rights of that person who is arrested and searched and who was previously unknown to the officers and about whom they had no previous information. Therefore, it was error for the Trial Court to admit into evidence against appellant, property seized from him at the time of his arrest and search in the premises.

4.

Appellant should have been entitled to a new trial where evidence was admitted against appellant at the time of his arrest in premises where police officers were executing a search warrant and where there was no evidence of a lottery operation going on at the time the officers entered the premises and where appellant was unknown to the police officers and about whom they had no previous information.

ARGUMENT

I

THE COURT ERRED IN DENYING APPELLANT'S MOTION
TO SUPPRESS EVIDENCE ON THE GROUNDS OF AN UN-
REASONABLE SEARCH AND SEIZURE BEFORE TRIAL

Prior to the trial, in this case, appellant filed a timely motion to suppress evidence seized from appellant's person at the time of his arrest on July 9, 1958. Attached to the motion was the affidavit of appellant setting forth, among other things, that the property was seized from his person.

At the hearing of the motion, counsel for the Government raised the point to the Court that the appellant did not allege that the property seized was owned by the appellant and, therefore, appellant did not assert standing on the motion. (JA 8). The Court agreed with Government counsel's argument and ruled that appellant had to prove ownership of the premises or the property. The Court denied the motion on that basis and no testimony was presented in further support of the motion. (JA 8, 9).

It is the contention of appellant that the Court erred in its ruling.

The Fourth Amendment of the United States Constitution protects the person as well as papers, houses and effects against unreasonable searches and seizures. The appellant alleged an unreasonable search of appellant's person and stated in his affidavit that the property he sought to be suppressed was, in fact, removed from his person. (JA 7). In this respect, appellant showed that his personal rights had been violated. Brandon v. United States, (U.S. App. D.C. No. 14464) ____ U.S. App. D.C. ____, ____ F. 2d ____.

Appellant, by his affidavit in support of the motion, admitted possession of the property he sought to be suppressed. Thus, it was not a case where a person disclaims ownership of property and possession as well. Harvey v. United States, 90 U.S. App. D.C. 167, 193 F. 2d

928. Appellant's failure to claim ownership was not fatal to his standing to challenge the legality of his arrest and search. He alleged a search of his person and this gave him standing on the motion without asserting ownership. Wyche v. United States, 90 U.S. App. D.C. 67, 193 F. 2d 703 (concurring opinion of J. Fahy).

II

THE TRIAL COURT ERRED IN DENYING APPELLANT'S
MOTION TO SUPPRESS EVIDENCE ON THE GROUNDS OF
AN UNREASONABLE SEARCH AND SEIZURE RENEWED
AT THE BEGINNING OF THE TRIAL BECAUSE THE
PRE-TRIAL JUDGE HAD ALSO DENIED THE SAME MOTION

At the beginning of the trial in this case and after the opening statement of counsel for the Government, appellant, through counsel, again renewed the motion to suppress evidence. (JA 10).

It was pointed out to the trial court that the pre-trial judge had denied the motion taking the position that appellant was required to allege ownership in the property. (JA 10).

The trial court took the position that it was going to be guided by the ruling of the pre-trial Judge and by that position denied the motion. (JA 11).

It is the contention of appellant that the trial court erred in denying appellant's motion to suppress for the same reasons that the pre-trial judge denied the same motion. By being guided by the pre-trial Judge's ruling, the trial court in effect ruled that appellant did not assert standing on the motion.

Appellant's standing was asserted by his affidavit in which he stated that the property sought to be suppressed was taken from his person by police officers. In effect, he admitted possession and alleged a violation of his personal rights.

In support of appellant's position on this point, appellant refers to the authorities cited in support of Point I of the Argument.

III

THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE PROPERTY SEIZED FROM THE APPELLANT AS A RESULT OF AN UNLAWFUL ARREST, UNLAWFUL SEARCH AND SEIZURE, UNDER THE CIRCUMSTANCES OF THIS CASE

The testimony adduced at the trial of this case showed that on July 9, 1958, officers of the Metropolitan Police Department, Morals Division, Gambling and Liquor Squad, while executing a search warrant for premises 1547 Third Street, N. W., Washington, D.C. entered the premises, upon being admitted by a thirteen year old girl and arrested and searched the appellant while he was proceeding from the dining room into the kitchen of the premises. (JA 12, 20). The officers had no arrest warrant for appellant. (JA 15). They had never seen appellant before, knew nothing about him and did not know who he was. (JA 15). At no time did Officer Mills see appellant face to face until he stopped him. (JA 16).

At the time appellant was stopped by the officers, there was nothing unusual about the premises and nothing in sight except normal and usual furniture. (JA 15). Appellant was stopped some 30-40 seconds after the officers entered the premises. (JA 15). No search of the premises proper was made until some fifteen minutes after the entry by the officers. (JA 19). The articles seized from the premises proper were found in a closet in the dining room and on top of the kitchen cabinet. (JA 19, 20).

Conceding for the sake of argument that the officers had a right to enter and search the premises pursuant to the search warrant, it is the contention of appellant that the officers had no right to arrest and search the appellant under the circumstances herein.

The situation in this case is analogous to the situation in the case of United States v. DiRe, 332 U.S. 581, 68 S. Ct. 222, 92 L. Ed. 210. In that case, officers stopped an automobile following information received

from an informant. The officers had no search warrant for automobile. The informant was in the automobile at the time the officers stopped it and identified another person in the car as one from whom the informant had received counterfeit gasoline ration coupons. DiRe was also a passenger in the automobile, but the officers had no previous information concerning him. He was taken to a police station, searched and counterfeit gasoline ration coupon were found on his person.

The United States Court of Appeals for the Second Circuit held the arrest and search of DiRe unlawful. United States v. DiRe, 159 F. 2d 818. This Court said at page 820 of its opinion:

" . . . So far as we can see, the arrest was utterly indefensible; a mere scooping up of all those present on the chance that any associate of the principals was probably engaged in any dealings with them, or, if not, in other transactions of the same kind; . . . If the prosecution of crime is to be conducted with so little regard for that protection which centuries of English law has given to the individual, we are indeed at the dawn of a new era; and much that we have deemed vital to our liberties, is a delusion."

The Supreme Court of the United States upheld the illegality of the arrest and search of DiRe, United States v. DiRe, supra, and during the course of its opinion held the following:

"Assuming, however, without deciding, that there was reasonable cause for searching the car, did it confer an incidental right to search DiRe? . . .

"The Government says that it would not contend that, armed with a search warrant for a residence only, it could search all persons found in it. But an occupant of a house could be used to conceal this contraband on his person quite as readily as can an occupant of a car. Necessity, an argument advanced in support of this search, would seem as strong a reason for searching guests of a house for which a search warrant had issued as for search of guests in a car for which none had been issued. By a parity of reasoning with that

on which the Government disclaims the right to search occupants of a house, we suppose the Government would not contend that if it had a valid search warrant for the car only it could search the occupants as an incident to its execution. How then could we say that the right to search a car without a warrant confers greater latitude to search occupants than a search by warrant would permit.

" . . . We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled.

" . . . Presumptions of guilt are not lightly to be indulged in from mere meetings."

The above is consistent with the principle that mere presence at the scene of a crime is not evidence of guilt. United States v. Williams, 341 U.S. 58, 71 S. Ct. 581, 95 L. Ed. 747; Hicks v. United States, 150 U.S. 442, 14 S. Ct. 144, 37 L. Ed. 1137.

It is obvious that the arrest and search of appellant, in this case, was part of a scooping up by the police officers of all those present in the hope that appellant was somehow connected with the suspected lottery operation at the Third Street premises. United States v. DiRe, USCA 2 Cir., supra.

The Government has relied on the case of Wyche v. United States, supra, in support of the legality of appellant's arrest and search. (JA 36). However, appellant contends that the Wyche case, supra, is inapplicable to the case at bar. In the Wyche case, supra, the officers, upon entering the premises found extensive evidence of number activity in progress. This Court said:

" . . . Upon entering the premises, the officers found extensive evidence of numbers activity. They arrested all persons present, subsequently releasing a number of them . . . Appellant, . . . , was arrested upon entry into the premises while the raid was in progress.

" . . . When the officers entered the premises and observed the situation, they were fully justified by the force of surrounding circumstances to feel there was ample probable cause to arrest all persons present. . . "

In the case at bar, the evidence is devoid of any showing that lottery activity was in progress at the time the officers entered the Third Street address. In fact all evidence and inferences are emphatically to the contrary. This, coupled with the fact that appellant was unknown to the officers, that they had no warrant for his arrest, and that they did not know who he was, clearly shows that the officers had no probable cause to arrest and search appellant, and therefore, his arrest and search were unlawful under the theory of the Supreme Court's decision in the case of the United States v. DiRe, supra.

The fact that he was in a premises for which a search warrant had issued and unless he claimed a proprietary or possessory interest in those premises he would have no standing to challenge the validity of the search warrant for those premises, does not affect his right to challenge the validity of the search and seizure from his person where it was without probable cause and without a warrant and in violation of his personal rights. cf. McDonald v. United States, 335 U.S. 451, 69 S. Ct. 191, 93 L. Ed. 153.

Before leaving this point, appellant contends that if there was any question prior to trial as to appellant's standing to challenge the legality of the search and seizure in this case, said question was laid to rest in appellant's favor by the testimony of the police officers who entered premises 1547 Third Street, Northwest, Washington, D.C. that certain articles were taken from appellant's person and this testimony was unchallenged.

The Government's own evidence adduced at the trial as to the seizure of the property from appellant's person gave appellant standing on his motion to suppress evidence. Williams v. United States, 99 U.S.

App. D.C. 161, 237 F. 2d 789. Also note Christensen v. United States, ___ U.S. App. D.C. ___, 259 F. 2d 192.

In view of all that has been said above, it was error for the trial court to admit into evidence articles seized from the person of appellant at the time of the entry of the officers into the Third Street premises and such articles and all testimony concerning them should have been excluded as evidence against the appellant in this case, as it follows that such articles were taken from appellant's person as a result of an unlawful search and seizure and in violation of his rights under the Fourth and Fifth Amendments of the United States Constitution.

IV

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR A NEW TRIAL ON THE GROUNDS THAT PROPERTY WAS ADMITTED INTO EVIDENCE WHICH WAS SEIZED FROM THE APPELLANT AS A RESULT OF AN UNREASONABLE SEARCH AND SEIZURE

Appellant filed a Motion For A New Trial alleging error in the denial of his motion to suppress evidence and error in the admission of physical evidence against the defendant during the trial. (JA 32).

Said motion was heard by the Trial Judge and arguments concerning the applicability of the case of United States v. DiRe, supra, were advanced. The Trial Court denied this motion. (JA 38).

It is the contention of appellant that the trial court erred in denying appellant's motion for a new trial and in support of this point, appellant refers and incorporates the points and authorities cited in support of Point III above, again reiterating that the arrest, search and seizure of appellant and property from appellant's person was in violation of his rights under the Fourth and Fifth Amendments of the United States Constitution.

CONCLUSION

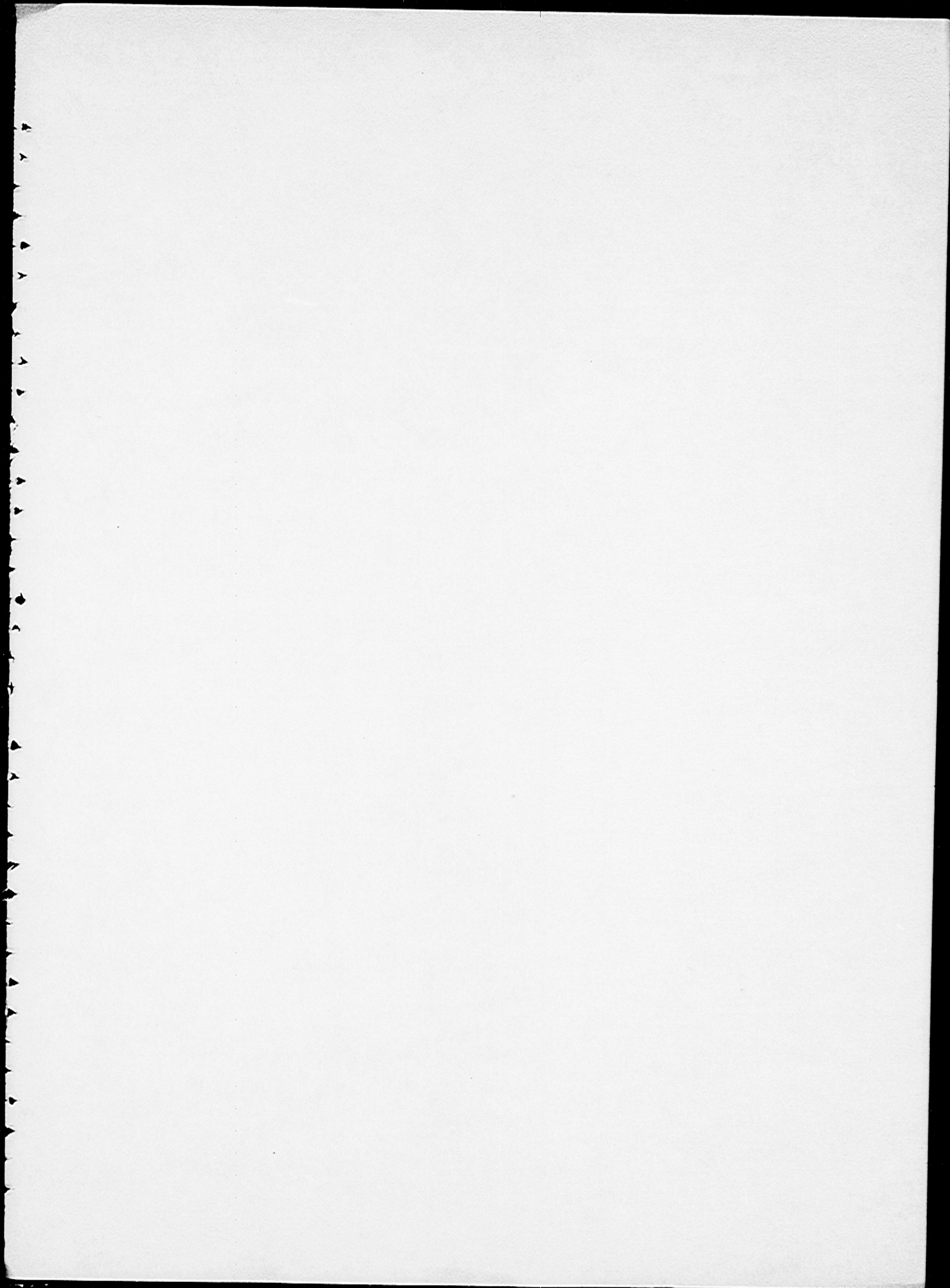
In conclusion, appellant submits to this Honorable Court that the Court below committed prejudicial and reversible error as to each and all of the points hereinbefore set forth in appellant's brief and therefore respectfully urge that this Honorable Court reverse the judgment entered against appellant by the Court below.

Respectfully submitted,

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*United States Court of Appeals
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District of Columbia Circuit*

FILED AUG 25 1959

Joseph W. Stewart

BRIEF FOR APPELLEE^K

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QUESTIONS PRESENTED

Where police officers make observations for two and a half months of illegal lottery-numbers activity which show that certain premises, *inter alia*, are an assembly point in the lottery operation, obtain a search warrant for those premises, observe the customary pickup from the premises at a time significant in the lottery operation, enter the premises, find only a man, a woman and a girl in the premises, and see the man seek rapid exit through the rear of the premises as the officers announce their identity and purpose to enter by the front of the premises, the man is arrested, and subsequently in his trial the man seeks to suppress marked money, keys to the front and back doors of the premises, and numbers code slips taken from his person incident to his arrest; in the opinion of appellee the following question is presented.

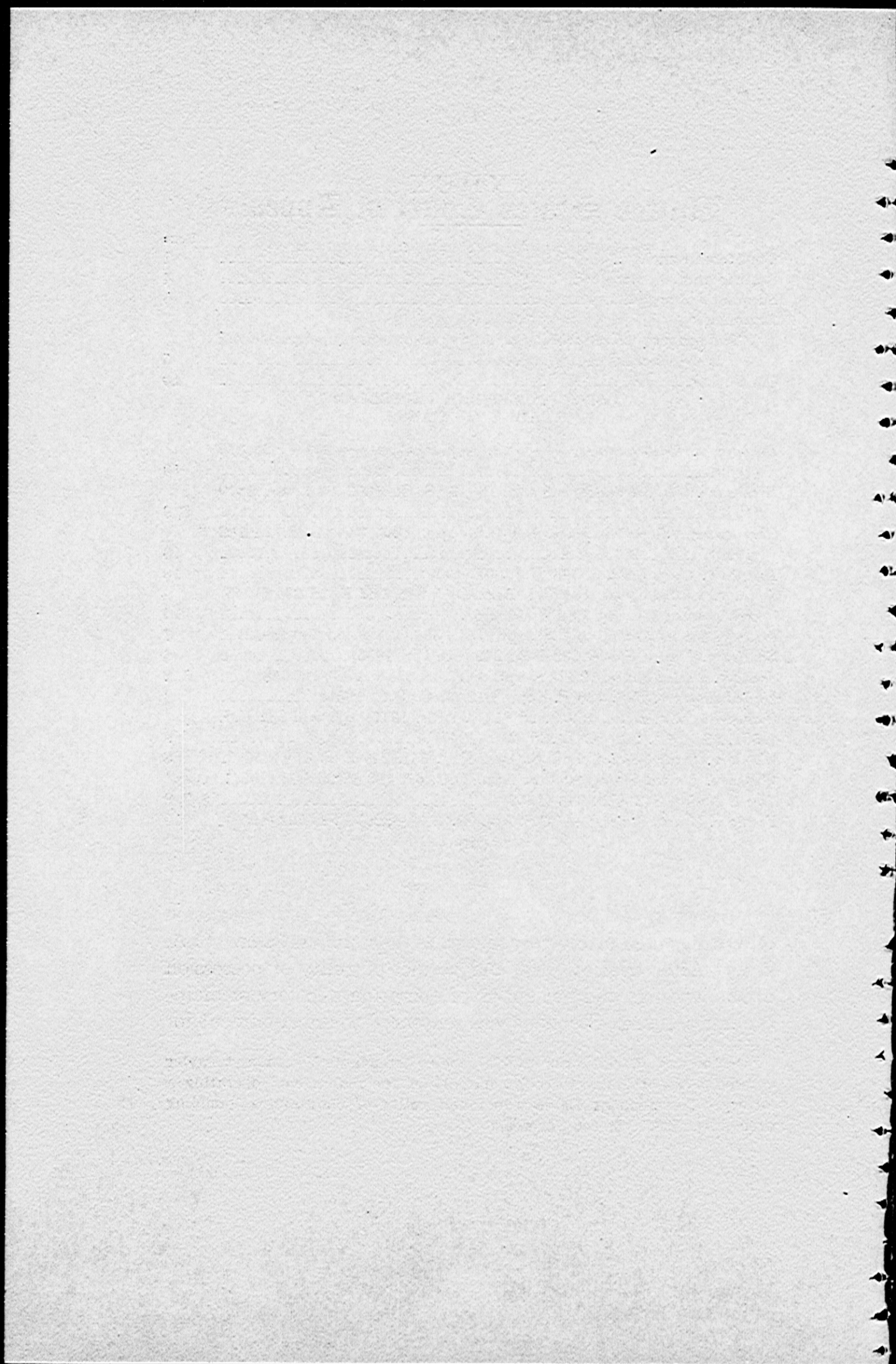
Was not appellant arrested in the proper performance of police duty?

INDEX

Counterstatement of the case.....	Page
Statute and rule involved.....	1
Summary of argument.....	4
Argument:	5
The property seized from appellant's person was properly received in evidence.....	5
Conclusion.....	10

TABLE OF CASES

<i>Barbour v. United States</i> , — U.S. App. D.C., —, 264 F. 2d 375 (1959).....	10
<i>Brinegar v. United States</i> , 338 U.S. 160, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949).....	6, 9
<i>Christenson v. United States</i> , 104 U.S. App. D.C. 35, 259 F. 2d 192 (1958).....	10
<i>Draper v. United States</i> , 358 U.S. 307 (1959).....	10
<i>Jones v. United States</i> , 104 U.S. App. D.C. 345, 262 F. 2d 234 (1958) <i>cert. granted</i> 3 L. Ed 2d 978 (1959).....	10
<i>Mills v. United States</i> , 90 U.S. App. D.C. 365, 196 F. 2d 600 (1952).....	7
<i>Sandez v. United States</i> , 239 F 2d 239 (9th Cir. 1956).....	8
<i>Smith v. United States</i> , 103 U.S. App. D.C. 48, 254 F. 2d 751 (1958).....	5, 8
<i>United States v. Bell</i> , 126 F. Supp. 612 (D.C. D.C. 1955).....	8
<i>United States v. DiRe</i> , 159 F. 2d 818 (2d Cir. 1947), <i>affirmed</i> 332 U.S. 581, 68 S. Ct. 222, 92 L. Ed. 210 (1947).....	9
<i>Woods v. United States</i> , 99 U.S. App. D.C. 351, 240 F 2d 37 (1956).....	8
<i>Wyche v. United States</i> , 90 U.S. App. D.C. 67, 193 F. 2d 703 (1951), <i>cert. denied</i> , 342 U.S. 943 (1952).....	5, 7, 8
<i>Young v. United States</i> , — U.S. App. D.C. —, 267 F. 2d 692 (1959).....	10



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*APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On November 3, 1958, there was filed in the District Court a twenty-one (21) count indictment charging Leroy Stephens, Henry T. Venson, Moses A. Taylor and Rebecca F. Davis¹ with violations of the gambling and lottery statutes. 22 D.C. Code §§ 1501, 1502, 1505; 26 U.S. Code § 4411. Stephens was charged in counts one (1), fourteen (14), and sixteen (16) with the offenses of operating a lottery from April 28th to about July 9, 1958, maintaining gambling premises; and, possession of writings used in a lottery known as the numbers game. (J.A. 2-5.) After trial by jury, and verdict of guilty of possession of the writings and not guilty of operating a lottery or maintaining premises, Stephens was sentenced to imprisonment for

¹ On the day of trial, prior to trial, the co-defendants Venson and Taylor entered pleas of guilty to count one (1) of the indictment: operating a lottery. Co-defendant Davis was found guilty of maintaining gambling premises at 1235 F Street, Northeast.

a term of nine (9) months and to pay a fine of five hundred dollars (\$500), by judgment filed April 10, 1959. This appeal was timely noted by Stephens. (J.A. 33, 38.)

Ellsworth Dory, a member of the Metropolitan Police Department, assigned to the Gambling and Liquor Squad, contacted appellant's co-defendant Moses A. Taylor on April 28, 1958 (R. 3) at 1235 E Street, Northeast for the purpose of playing numbers. Between April 28, 1958 and July 9, 1958, the officer played numbers a total of fifteen times (R. 3, 5, 9, 11, 12, 15, 16, 18 and 20). On all but one of these occasions he did business with co-defendant Taylor and on the one other occasion he did business with the co-defendant, Davis (R. 18.)

During this time two other Metropolitan Police officers, Carter and Durham, also members of the gambling and liquor squad, began making observations of the same premises at 1235 E Street, Northeast on June 2nd, 1958 (R. 57). On ten diverse dates between June 2nd and July 9, 1958, these officers observed Moses A. Taylor depart 1235 E Street, Northeast at about 12:45 P.M. with pockets bulging, enter and leave several other premises, with pockets bulging and finally enter 1547 Third Street, Northwest and leave those premises minus his bulge (R. 58-72). On seven days the officers saw co-defendant Venson enter premises at 1547 Third Street, Northwest (once with a brown bag), and to leave those premises shortly thereafter with a large brown bag (R. 62-72). On July 3rd and 7th, 1958, one William Proctor a known numbers operator was seen to enter and leave 1547 Third Street, Northwest (R. 70-72). The premises at 1547 Third Street, Northwest were observed on ten diverse dates between June 2nd and July 9, 1958 (R. 58-72).

On the morning of July 9, 1958, the police applied to the United States Commissioner for a search warrant for the premises 1547 Third Street, Northwest, 1235 E Street, Northeast; and, arrest warrants for co-defendants Taylor, Davis and Venson (John Doe) (J.A. 20). The application for the warrant was accompanied by a detailed affidavit reciting many

of the facts set forth above (Supp. Rec.). The requested warrants were issued by the Commissioner, including the search warrant for the premises 1547 Third Street, Northwest (J.A. 19). All warrants were executed at about the same time by different officers at various locations (R. 72, 94, 95; Arrest warrant for co-defendant Davis).

Police officers Mills, Foulkes and Foran executed the search warrant for the premises 1547 Third Street, Northwest (J.A. 12, 17, 19). Another officer, Carter, observed those premises beginning about 2:25 P.M. About ten (10) minutes after he began his observation he saw co-defendant Venson enter those premises. In about five (5) to ten (10) minutes Venson came out the rear of the premises "carrying a brown paper bag at the time." When Venson had gone Officer Carter signaled Lieutenant Foran, who was parked a short distance away in a cruiser, that Venson had come out with the bag. Officer Carter then stationed himself at the rear door of the premises (R. 85-87).

Officers Mills, Foulkes and Foran proceeded to the front door of the premises, they knocked, and informed a girl who answered the door they were police officers executing a search warrant (J.A. 12, 20). They entered a little hallway (J.A. 14), straight beyond the little hallway was an open doorway leading into a dining room (J.A. 16). Appellant and a woman were observed in the dining room (J.A. 14). Appellant's back was to the officers. The officers never saw his face until they arrested him (J.A. 16). As the officers entered the open doorway into the dining room, appellant was in another doorway leading from the dining room into the kitchen, which was in rear of the dining room. Appellant was leaving the room "in a hurried manner" (J.A. 12, 16). Appellant was at that time placed under arrest.

The officers had never seen appellant before. They had no warrant for his arrest (J.A. 15). On appellant's person the officers found marked money, numbers code slips, and keys to the front and back doors of the premises (J.A. 12-13, 20-1). Elsewhere in the premises numbers paraphernalia, books and records were found after the arrest of appellant (J.A. 18).

In the course of trial appellant sought to suppress these items of money, keys and numbers code slips (J.A. 23, 24-25, 31). The motion was entertained and denied in the trial, on the basis of the evidence of the "surrounding circumstances" (J.A. 22). The suppression of these items was again requested after the verdict, by motion for a judgment of acquittal N.O.V. or for new trial, and again denied (J.A. 33-38). This appeal followed the imposition of sentence on the conviction of possession of numbers slips.

STATUTE AND RULE INVOLVED

Title 22, District of Columbia Code, Section 1502, provides:

If any person shall within the District have in his possession, knowingly, any ticket, certificate, bill, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for the purpose of playing, carrying on, or conducting any lottery, or the game or device commonly know as policy lottery or policy, he shall be fined upon conviction of each said offense not more than \$500 or be imprisoned for not more than six months, or both.

Rule 41(e), Federal Rules of Criminal Procedure, provides:

A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hear-

ing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearings.

SUMMARY OF ARGUMENT

Being present outside, with knowledge from observations extending over two and a half months that the premises were an assembly point in the operation of an illegal numbers-lottery, and that the usual pickup man was departing the premises with the fruits of the assembly after only a brief stay therein, the officers could reasonably infer that someone inside those premises had assisted the assembly of the fruits of the lottery. Such persons were properly subject to arrest. *Smith v. United States, infra*. The entry of the officers into those premises was authorized by a search warrant validly executed. Appellant was found in "a secret rendezvous or hideout for illegal activities" and properly arrested. *Wyche v. United States, infra*. As the officers announced their entry by the front entrance, appellant sought hasty exit by the rear. This, in addition to other basis, clearly justified the arrest of appellant.

ARGUMENT

I

The property seized from appellant's person was properly received in evidence

Appellant argues "the trial court erred in admitting into evidence [the] property seized from appellant" (Br. p. 11). To the contrary, this evidence was properly admitted into evidence.

Appellant was arrested during the course of the execution of a search warrant, but without any arrest warrant. The absence of an arrest warrant is not critical to the case. A search and

seizure is lawfully predicated upon probable cause to believe that the individual in question has committed a crime. The test of probable cause has been stated in great particularity by the Supreme Court, *Brinegar v. United States*, 338 U.S. 160, 173-176, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949):

"[There is a] difference between what is required to prove guilt in a criminal case and what is required to show probable cause for arrest or search. * * * There is a large difference between the two things to be proved, as well as between the tribunals which determine them, and therefore a like difference in the quanta and modes of proof required to establish them.

* * * * *

"In dealing with probable cause, however, as the name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved.

"The substance of all the definitions' of probable cause 'is a reasonable ground for belief of guilt'. *McCarthy v. De Armit*, 99 Pa. St. 63, 69, quoted with approval in the *Carroll* opinion. 267 U.S. at 161. And this 'means less than evidence which would justify condemnation' or conviction, as Marshall, C. J., said for the Court more than a century ago in *Locke v. United States*, 7 Cranch 339, 348. Since Marshall's time, at any rate, it has come to mean more than bare suspicion: Probable cause exists where 'the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed. *Carroll v. United States*, 267 U.S. 132, 162."

"These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with

privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, non-technical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice." (Footnotes omitted.)

In the instant case the officers had such probable cause as to appellant.

Over the course of some two and a half months, observations were made by the officers. These observations clearly would support a reasonable belief on the part of the police that the premises in which appellant was arrested was an assembly point and "a secret rendezvous or hideout" for illegal lottery-numbers activity. *Wyche v. United States*, 90 U.S. App. D.C. 67, 193 F. 2d 703, 705 (1951), *cert. denied*, 342 U.S. 943 (1952). Such observations had been sufficient to convince the United States Commissioner of such conclusion regarding the premises. Thereafter, the officers had observed one of the usual visitors to the premises, Venson, enter the premises and leave in a few minutes with a brown bag. This was at a time critical to the operations of the numbers lottery. *Mills v. United States*, 90 U.S. App. D.C. 365, 196 F. 2d 600 (1952). It thus appears clear that, while Venson was inside and the officers observed the premises from the outside, that illegal activity was, to the knowledge of the police, being conducted inside those premises.

The officers immediately entered the premises, as Venson left. Inside those premises they at once found appellant. It was reasonable to infer that appellant had been engaged with

Venson in the illegal activity just concluded seconds before the arrest of appellant. Appellant was properly arrested in the house on the basis of the facts just theretofore learned and inferred by the officers. *Smith v. United States*, 103 U.S. App. D.C. 48, 254 F. 2d 751 (1958).

In any event, appellant was in a place which the officers reasonably believed to have been secretly used in the commission of a felony.

"* * * the officers were justified in inferring that all who were present or who entered the room at that time of day were probably participants in the operation of the numbers game. *Beard v. United States*, 1935, 65 App. D.C. 231, 238, 82 F. 2d 837, 844, certiorari denied, 1935, 298 U.S. 655, 56 S. Ct. 675, 80 L. Ed. 1382.

"Since both the search warrant and the arrests were legal, it is settled law that the search of appellants was legal, and the evidence thereby obtained was admissible."

Wyche v. United States, *supra*. See also *Woods v. United States*, 99 U.S. App. D.C. 351, 240 F. 2d 37 (1956), affirming Chief Judge Laws' application of the *Wyche* rule in *United States v. Bell*, 126 F. Supp. 612 (D.C. D.C. 1955); and *Sandez v. United States*, 239 F. 2d 239 (9th Cir. 1956).² This was clear authority for the officers to arrest appellant.

Appellant argues the *Wyche* case is dependent upon fact that numbers operations were visible and in progress when the officers in that case entered the premises, whereas such was not a part of the facts of the instant case (Br. pp. 13-14). Appellant fails to give weight, credit or even notice of the *Smith* case, *supra*. By force of the *Smith* case, the *Wyche*

² In *Sandez*, an undercover narcotics agent arranged to receive a large delivery of heroin, supposedly from Mexico, in a Los Angeles motel room. Other agents stationed themselves outside in the street. While the delivery was taking place they noted a nearby car with Mexican license plates. One of its occupants twice left the car, walked to the corner, looked around and "sort of wrung his hands." Upon receiving a signal that the delivery had been made, the outside agents arrested this man without a warrant. The Ninth Circuit held there was probable cause for his arrest and affirmed his conviction upon evidence that had been seized incident to the arrest.

case is applicable, where, as in the instant case, the officers had probable cause to believe that just seconds before their entry the illegal lottery activity had been in progress in the premises.

Appellant says, without support in the record, the police officers were "scooping up * * * all those present in the hope that appellant was somehow connected with the suspected lottery operations." He cites *United States v. DiRe*, 159 F. 2d 818, 820 (2d Cir. 1947), *affirmed* 332 U.S. 581, 68 S. Ct. 222, 92 L. Ed. 210 (1947). He argues "mere presence at the scene of a crime is not evidence of guilt" (Br. p. 13). Properly, his argument should be that mere presence is not *sufficient* evidence to show guilt beyond a reasonable doubt. But this quantum of evidence is, of course, not required in the issue of search and seizure. See *Brinegar v. United States*, *supra*. In addition, the *DiRe* case is inapplicable to the instant case because an informant in that case had singled out from the several persons, also occupants of an automobile, one person as the guilty person. Thus, those officers violated the information of their informant by arresting *DiRe*, who had not been pointed out by the informant, 159 F. 2d at page 820.³

In the instant case, to the contrary of the facts in *DiRe*, no one person had been singled out by the evidence as being guilty to the exclusion of all other persons present. The logical inferences of the facts reasonably known to the officers in the instant case were that some one in the house had prepared the brown bag for Venson to receive. None of these persons found inside the house (a girl, a woman, and appellant) was more likely the person who assisted Venson than was appellant. Thus, appellant's arrest can properly be justified on the basis of facts known and reasonably inferred by the officers prior to their entry into the premises.

³The proper full quotation reproduced on page 12 of appellant's brief is as follows, in pertinent part:

"* * * a mere scooping up of all those present on the chance that any associate of the principals was probably engaged in any dealings between them, or, if not, in other transactions of the same kind; and this in spite of the fact that Reed on whose information Gross acted, had not mentioned *DiRe* as *Buttitta's confederate*." [Emphasis supplied]

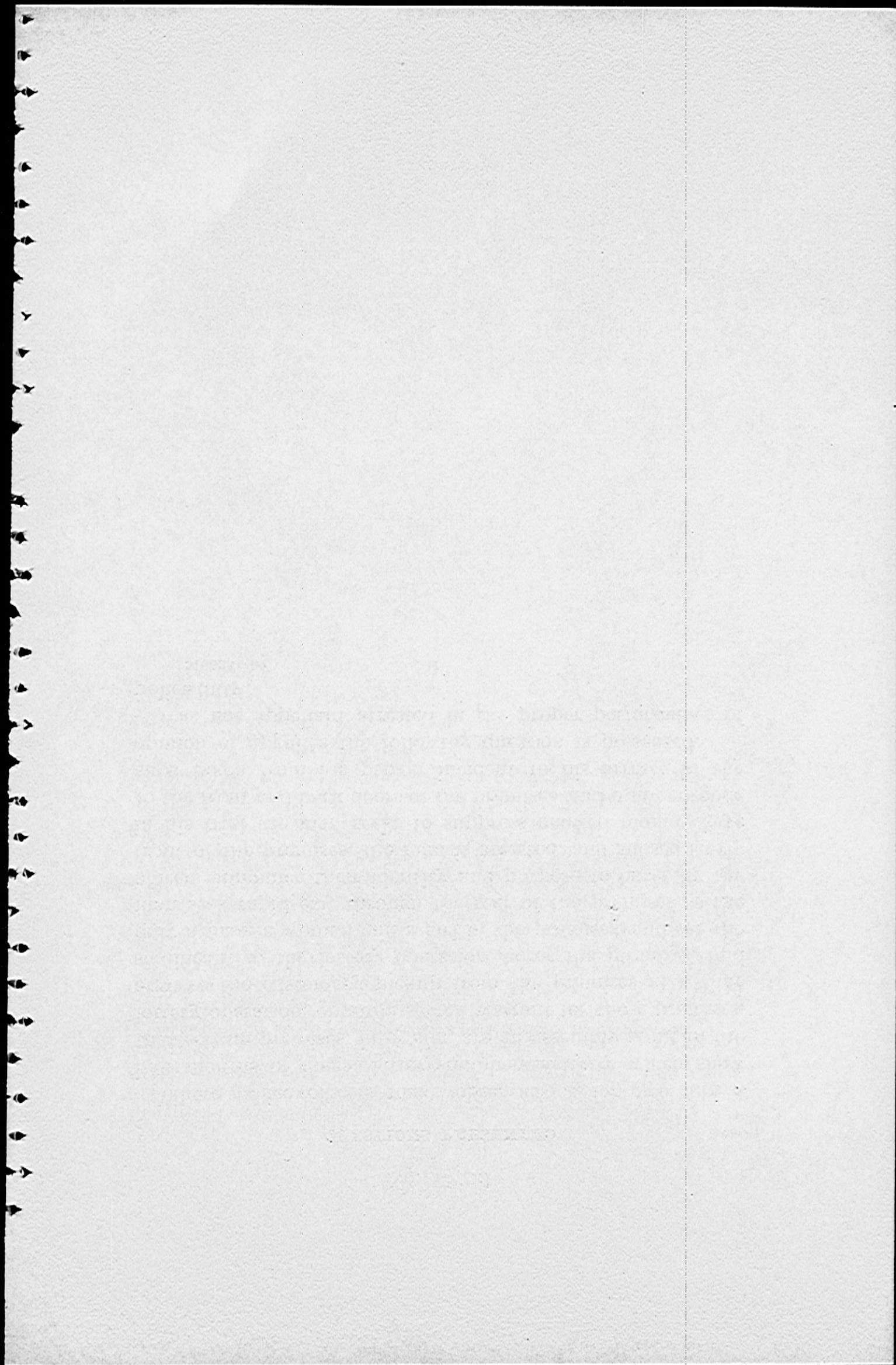
These facts were verified to a degree by the officers by appellants' attempted hasty exit from the premises, by way of the rear of the premises, as the police officers announced their identity and purpose, and made a legal entry by the front entrance. *Draper v. United States*, 358 U.S. 307 (1959); *Christenson v. United States*, 104 U.S. App. D.C. 35, 259 F. 2d 192 (1958). This Court has affirmed a search and seizure issue on a substantially similar set of facts of the execution of a search warrant being interrupted by the flight of a person. *Young v. United States*, — U.S. App. D.C. —, 267 F. 2d 692, 693-4 (1959). Also, the Court has affirmed upon other substantially similar facts in *Barbour v. United States*, — U.S. App. D.C. —, 264 F. 2d 375 (1959). See also *Jones v. United States*, 104 U.S. App. D.C. 345, 262 F. 2d 234 (1958), *cert. granted* 3 L. Ed. 2d 978 (1959). To trained police officers, this act of flight, in light of all other facts known to the officers, was sufficient in and of itself to justify the arrest. *Ibid.*

CONCLUSION

Wherefore, it is respectfully submitted the judgment of the District Court be affirmed.

OLIVER GASCH,
United States Attorney.

CARL W. BELCHER,
Assistant United States Attorney.



JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,221

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED JUL 27 1959

LEROY STEPHENS,

Joseph W. Stewart

CLERK

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

825

(i)

INDEX

	<u>Page</u>
Relevant Docket Entries	1
Indictment	2
Motion to Suppress Evidence	5
Affidavit of Leroy Stephens	6
Excerpts from Transcript of Proceedings on Defendant's Motion to Suppress	7
Excerpts from Transcript of Proceedings Before the Honorable Bumita Shelton Matthews, Judge, February 9, 1959	9
<u>Witnesses:</u>	<u>Tr. Page</u>
James B. Mills	
Direct	114 12
Cross	118 14
Redirect	123 16
Recross	123 16
Ward C. Foulkes	
Direct	125 17
Cross	128 18
William D. Foran	
Direct	130 19
Cross	170 31
Motion for Judgment of Acquittal, n.o.v. or for a New Trial	32
Excerpts from Transcript of Proceedings on Defendant's Motion for Judgment of Acquittal n.o.v. or for New Trial; Sentencing.	33
Notice of Appeal	38

JOINT APPENDIX

 UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLUMBIA

The United States of America	:	
	:	
v.	:	Criminal No. 1009-58
	:	
Leroy Stephens	:	
Henry T. Venson	:	
Moses A. Taylor	:	
Rebecca F. Davis	:	

RELEVANT DOCKET ENTRIES

1958

Nov. 3	Presentment and Indictment filed (21 Counts)
Nov. 7	ARRAIGNED, Plea NOT GUILTY entered: Defendant granted 15 days to file appropriate motions; Defendant ON BOND. APPEARANCE of William J. Garber entered and filed; Attorney William J. Garber present. SIRICA, J.
Nov. 21	MOTION for return of property.
Nov. 21	Motion to suppress evidence and affidavit in support thereof.
Nov. 26	Motion for return of property argued and DENIED. HOLTZOFF, J.
Dec. 3	Order for return of property. SCHWEINHAUT, J.
Dec. 3	Appearance of Meredith Coffman entered and filed: Order for return of property. SCHWEINHAUT, J.
Dec. 12	Motion to suppress evidence heard, argued and DENIED. LETTS, J.
Feb. 9, 10, 11, 12	Trial before MATTHEWS, J. and jury.
Feb. 12	VERDICT: Not Guilty on Counts 1 and 14; GUILTY on Count 16.
Feb. 18	Motion for Judgment of Acquittal, N.O.V. or for a New Trial.
Apr. 10	Motion for Judgment of Acquittal N.O.V. or for a New Trial, DENIED. MATTHEWS, J.

1959

- Apr. 10 Sentenced to imprisonment for a period of nine (9) months and to pay a fine of Five Hundred Dollars (\$500.00). Judgment and Commitment. MATTHEWS, J.
- Apr. 10 Notice of Appeal from Judgment.
- May 19 Order extending time to file Record on Appeal to June 22, 1959, MATTHEWS, J.

[Filed Nov. 3, 1958]

Grand Jury No. 1220-58
1221-58
1223-58
1222-58

Vio. 22 D.C.C. 1501, 1502, 1505
26 U.S.C. 7262

Grand Jury Impanelled August 28, 1958, Sworn in on September 2, 1958

INDICTMENT

The Grand Jury charges:

Continuously during the period from about April 28, 1958, to about July 9, 1958, within the District of Columbia, Leroy Stephens, Henry T. Venson, Moses A. Taylor and Rebecca F. Davis were concerned as owners, agents and clerks, and in other ways, in managing, carrying on and promoting a lottery known as the numbers game.

SECOND COUNT:

On or about April 28, 1958, within the District of Columbia, Moses A. Taylor sold and transferred to Elsworth Dory a chance, right and interest in a lottery known as the numbers game.

THIRD COUNT:

On or about April 29, 1958, within the District of Columbia, Moses A. Taylor sold and transferred to Elsworth Dory a chance, right and interest in a lottery known as the numbers game.

FOURTH COUNT:

On or about May 7, 1958, within the District of Columbia, Moses A. Taylor sold and transferred to Elsworth Dory a chance, right and interest in a lottery known as the numbers game.

FIFTH COUNT:

On or about May 19, 1958, within the District of Columbia, Moses A. Taylor sold and transferred to Elsworth Dory a chance, right and interest in a lottery known as the numbers game.

SIXTH COUNT:

On or about May 20, 1958, within the District of Columbia, Rebecca F. Davis sold and transferred to Elsworth Dory a chance, right and interest in a lottery known as the numbers game.

SEVENTH COUNT:

On or about May 23, 1958, within the District of Columbia, Moses A. Taylor sold and transferred to Elsworth Dory a chance, right and interest in a lottery known as the numbers game.

EIGHTH COUNT:

On or about June 3, 1958, within the District of Columbia, Moses A. Taylor sold and transferred to Elsworth Dory a chance, right and interest in a lottery known as the numbers game.

NINTH COUNT:

On or about June 6, 1958, within the District of Columbia, Moses A. Taylor sold and transferred to Elsworth Dory a chance, right and interest in a lottery known as the numbers game.

TENTH COUNT:

On or about June 20, 1958, within the District of Columbia, Moses A. Taylor sold and transferred to Elsworth Dory a chance, right and interest in a lottery known as the numbers game.

ELEVENTH COUNT:

On or about June 27, 1958, within the District of Columbia, Moses A. Taylor sold and transferred to Elsworth Dory a chance, right and interest in a lottery known as the numbers game.

TWELFTH COUNT:

On or about July 2, 1958, within the District of Columbia, Moses A. Taylor sold and transferred to Elsworth Dory a chance, right and interest in a lottery known as the numbers game.

THIRTEENTH COUNT:

On or about July 9, 1958, within the District of Columbia, Moses A. Taylor sold and transferred to Elsworth Dory a chance, right and interest in a lottery known as the numbers game.

FOURTEENTH COUNT:

Continuously during the period from about April 28, 1958, to about July 9, 1958, within the District of Columbia, Leroy Stephens did knowingly as lessee, agent, operator and occupant, maintain, aid and permit the maintaining of a gambling premises located at 1547 Third Street, Northwest.

FIFTEENTH COUNT:

Continuously during the period from about April 28, 1958, to about July 9, 1958, within the District of Columbia, Moses A. Taylor and Rebecca F. Davis did knowingly, as lessees, agents, operators and occupants, maintain, aid and permit the maintaining of a gambling premises located at 1235 E Street, Northeast.

SIXTEENTH COUNT:

On or about July 9, 1958, within the District of Columbia, Leroy Stephens knowingly had in his possession and under his control notations, records, receipts, tickets, certificates, bills, slips, tokens, papers and writings, current and not current, used and to be used in a lottery known as the numbers game.

SEVENTEENTH COUNT:

On or about July 9, 1958, within the District of Columbia, Henry T. Venson knowingly had in his possession and under his control notations, records, receipts, tickets, certificates, bills, slips, tokens, papers and writings, current and not current, used and to be used in a lottery known as the numbers game.

EIGHTEENTH COUNT:

On or about July 9, 1958, within the District of Columbia, Moses A. Taylor knowingly had in his possession and under his control notations, records, receipts, tickets, certificates, bills, slips, tokens, papers and writings, current and not current, used and to be used in a lottery known as the numbers game.

NINETEENTH COUNT:

On or about July 9, 1958, within the District of Columbia, Rebecca F. Davis knowingly had in her possession and under her control notations, records, receipts, tickets, certificates, bills, slips, tokens, papers and writings, current and not current, used and to be used in a lottery known as the numbers game.

TWENTIETH COUNT:

Continuously during the period from about April 28, 1958, to about July 9, 1958, within the District of Columbia, Moses A. Taylor was engaged in the business of accepting wagers without having previously paid the special tax as required by Title 26, United States Code, Section 4411.

TWENTY-FIRST COUNT:

Continuously during the period from about April 28, 1958, to about July 9, 1958, within the District of Columbia, Rebecca F. Davis was engaged in the business of accepting wagers without having previously paid the special tax as required by Title 26, United States Code, Section 4411.

/s/ Oliver Gasch

Attorney for the United States in
and for the District of Columbia

A TRUE BILL:

/s/

Foreman.

[Filed Nov. 21, 1958]

MOTION TO SUPPRESS EVIDENCE

Comes now the petitioner, Leroy Stephens, through his attorney, William J. Garber, and respectfully moves the Honorable Court to suppress as evidence against the petitioner in any criminal proceeding, certain items and articles, to wit: two door keys, one ten cent piece in United States coin, one five cent piece in United States coin, and all papers and paper writings of any nature, which were seized from

petitioner's person on or about the 9th day of July, 1958 at premises 1547 Third Street, Northwest, Washington, D.C. by officers Mills and Foran, and others, of the Metropolitan Police Department, Washington, D.C., and as reasons therefore, states as follows:

1. The search and arrest of petitioner was unreasonable and in violation of petitioner's rights under the Fourth and Fifth Amendments of the U. S. Constitution.

2. The arrest of the petitioner was without a warrant and without probable cause.

3. The petitioner was not committing any misdemeanor in the presence or view of the officers.

4. The search of the petitioner was against his will and without his consent.

5. There were no circumstances dispensing with the necessity of obtaining a warrant for the arrest of the petitioner.

WHEREFORE: Petitioner prays that this Motion be granted and that the items and articles as described above be suppressed as evidence against the petitioner in any criminal proceeding.

Points and Authorities:

Fourth and Fifth Amendments to the U. S. Constitution.

United States v. DiRe, 332 U. S. 581

/s/ William J. Garber
Attorney for Petitioner
424 Fifth St. N.W.
Washington 1, D. C.

[Certificate of Service]

[Filed Nov. 21, 1958]

AFFIDAVIT

DISTRICT OF COLUMBIA, ss

Affiant, Leroy Stephens, first being duly sworn, on oath, according to law, deposes and says that on or about the 9th day of July, 1958, at about 2:45 p.m., Officers Mills, Foran and others entered premises 1547 Third Street, Northwest, Washington, D. C. and searched affiant's

person and removed from affiant's person certain articles and items, to wit: two door keys, one ten cent piece in United States Coin, one five cent piece in United States Coin and certain papers and paper writings, all of which affiant verily believes are being held on behalf of the United States as evidence against the affiant.

Affiant further deposes and says that affiant was never shown a warrant for affiant's arrest and affiant verily believes that no warrant for affiant's arrest was outstanding at the time of affiant's arrest.

Affiant further deposes and says that the search of affiant's person was against his will and without his consent.

Further affiant sayeth not.

/s/ Leroy Stephens

[JURAT dated Nov. 21, 1958]

[Filed June 22, 1959]

EXCERPTS FROM TRANSCRIPT OF PROCEED-
INGS ON DEFENDANT'S MOTION TO SUPPRESS

* * * *

1

Washington, D. C.

Friday, December 12, 1958

Before Chief Judge F. DICKINSON LETTS at 11:40 a.m. today, on defendant's motion to suppress evidence.

Appearances:

For the United States:

Mr. VICTOR CAPUTY

For the defendant Stephens:

Mr. WILLIAM J. GARBER

2

* * * *

MR. GARBER. Your Honor, this is a motion to suppress evidence in Criminal Case No. 1009-58, United States of America versus Leroy Stephens and others. This motion is filed on behalf of Leroy Stephens

only. I intend to support my motion with testimony, and I would like at this time to call Lieutenant Foran.

MR. CAPUTY. May I address Your Honor, if the Court please? Again in a motion of this type, Your Honor, counsel has filed an affidavit. But in the affidavit counsel has filed he does not assert standing, as he is required to do under the cases decided by this Court and our Circuit Court here.

In his affidavit counsel does not show that the defendant owns the premises or has an interest in the premises, and he doesn't show that the property taken was his property. And that is the requirement he must comply with, if Your Honor please, unless he says he is going to put the defendant on the stand.

3 MR. GARBER. If Your Honor please, I don't think in a motion of this kind the defendant is required to allege ownership, but merely that he had the possession. And the affidavit states that the articles were taken from his person.

MR. CAPUTY. Oh no, Your Honor. He must say that the property was his. He either has to claim an interest or ownership of the premises, or ownership of the property seized. And he doesn't say that in his affidavit, if Your Honor please.

MR. GARBER. Your Honor, I submit, in replying to Mr. Caputy's argument, that possession itself is sufficient to give the defendant standing.

MR. CAPUTY. That is not in accordance with the latest cases in the Court of Appeals, if Your Honor please.

THE COURT. The Court agrees with Mr. Caputy on that proposition.

MR. GARBER. The Court is ruling then that possession alone is not sufficient to bring the defendant before the Court?

THE COURT: Yes, sir.

MR. GARBER. Would Your Honor then give me an opportunity to come prepared with authorities on this point? I filed a motion, and of course the Government has filed no written opposition. And it has always

been my understanding that possession was sufficient. I would like, therefore, to have an opportunity for a few moments to bring in authorities to support my position.

MR. CAPUTY. He won't find them in this jurisdiction, if the Court please.

THE COURT: Unless you expect to prove ownership of the premises or the property, I will have to deny your motion.

MR. GARBER. Well I don't think we actually can allege ownership, Your Honor, because I don't think the defendant could say, if he would take the stand, that he owned the property in the sense that he had title to it. But we are going on the theory that he had the possession, and therefore that would be sufficient, because his rights in his person were violated, in that he was searched and this property was removed from him.

THE COURT: The motion will be denied.

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[Filed May 7, 1959]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

THE UNITED STATES OF AMERICA)

versus)

LEROY STEPHENS, ET AL,)

DEFENDANTS.)

Criminal Action

No. 1009-58

Washington, D. C.

Monday, February 9, 1959

The defendants herein appeared before the Honorable BURNITA

SHELTON MATTHEWS, Judge, in the United States District Court, at approximately 10:00 a.m. for trial by jury.

APPEARANCES:

For the Government:

VICTOR W. CAPUTY, Esq.
Assistant United States Attorney

For the Defendants:

WILLIAM J. GARBER, ESQ., and
CURTIS P. MITCHELL, Esq.

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(Following opening statement by
Mr. Caputy, there was a confer-
ence at the bench, a portion of
which was as follows:

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MR. GARBER: Your Honor, I have another motion I'd like to make at this time. I am going to renew a motion to suppress evidence as far as Leroy Stephens is concerned. This motion was filed before trial. The motion was set to be heard before Judge Letts. No testimony --

THE COURT: I understood that Judge Letts ruled --

MR. CAPUTY: He denied the motion. He sustained the Government's contention that he had not alleged standing and so he denied the motion without prejudice.

THE COURT: You have the same papers.

MR. GARBER: I have the same papers. Judge Letts took the position that the defendant was required to allege ownership in the property and I maintain that a person who is standing on a motion to suppress doesn't have to maintain or allege ownership; possession is enough.

MR. MITCHELL: Your Honor, I understood that his ruling was without prejudice and under the Gatewood case--

THE COURT: May I see the jacket.

MR. GARBER: There is a formal order in the jacket, Your Honor, signed by Judge Letts. I believe that is it. (Indicating)

2b THE COURT: No, this is Judge Holtzoff and this one is Judge Schweinhaut.

MR. GARBER: I believe there is another one there.

THE COURT: Yes, it says it is denied. It doesn't have any qualification.

MR. GARBER: And Your Honor then will not permit me to raise the motion.

THE COURT: You can raise whatever you like but at this point I'm going to be guided by Judge Letts' ruling.

MR. GARBER: And may I make this statement: To save time and to expedite the matters, of course to preserve the record, I would have to object to any evidence that would be seized from Stephens in order to preserve my rights under the motion. I wonder if I could have a continuing objection in the record, which would make it unnecessary for me to make the objection each time on the same grounds and my continuing objection would be that the evidence seized from the defendant Stephens was seized in violation of his rights under the Fourth and Fifth Amendment.

THE COURT: Whenever you object to anything you can rise and say you object for the grounds you have already stated.

MR. GARBER: All right, thank Your Honor.

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DIRECT EXAMINATION

BY MR. CAPUTY:

* * * * *

Q. Now directing your attention to July 9, 1958, did you go to the premises of 1547 3rd Street, Northwest, in the District of Columbia?

A. I did, sir.

Q. Was Lieutenant--Sergeant Foran, Lieutenant Foran now--was he there with you? A. He was, sir.

Q. And Officer Foulkes? A. He was.

Q. And who executed the warrant? A. Lieutenant Foran.

115 Q. How did you gain admittance to the premises? Did you all go to the front door, or rear door, or what? A. We all went to the front door, the three of us.

Q. How did you gain admittance to the premises? A. A little 13 year old girl let us in the premises.

Q. Did you knock on the door? A. Yes, sir.

Q. And what did you say before you went into the premises?

A. Lieutenant Foran told her that he had a search warrant for numbers violations.

Q. Now in the premises there will you tell the Court and jury who, if anyone, you observed in the premises? A. I observed the defendant Stephens in the dining room of the premises, and he was in a hurried way going into the kitchen at the time I arrested him, and I searched him at that time and found 788 dollars in bills, along with a marked nickel and a marked dime from his pants pocket; also three numbers code slips in the amount owed by the writer.

Q. Now were you at police headquarters when a recordation of the bills and the marking of the change was made, sir? A. I made that in the premises.

Q. No, prior to the raid? A. Oh; no, sir.

116 Q. May I have this envelope, if your Honor please, and its contents marked as Government's Exhibit No. 8 for identification, and

may I have this other envelope and its contents marked as Government's Exhibit No. 9 for identification?

THE COURT: Yes.

(Whereupon, Government's Exhibits Nos. 8 and 9 were marked for identification).

BY MR. CAPUTY:

Q. I show you, sir, what has been marked as Government's Exhibit No. 3 for identification, a brown envelope and contents. I ask you to examine the contents and tell us whether you can identify the contents?

A. I can, sir.

Q. And how do you identify the contents, sir? A. The nickel has a punch in the letter "o" of the word "of" in the nickel, and the dime also has a punch in the letter "o" in the word "of."

Q. And where was it that you saw the contents of Government's Exhibit No. 8--number--what's that number? A. Three.

Q. For identification, the first time? A. I took it from Defendant Stephens's pocket.

* * * * *

117 Q. Did you look at -- I show you what has been marked as Government's Exhibit No. 8 for identification and its contents. I ask you to examine it and tell us whether you can identify the contents. A. I can, sir.

Q. And how do you identify the contents of Government's Exhibit No. 8 for identification, and what are the contents of it? A. I put this tag on these keys at the time I took them from the Defendant Stephens, and one is a key to the front door of the premises 1547 3rd Street, Northwest, and one is a key to the rear door.

* * * * *

118 Q. Would you look at Government's Exhibit No. 9 for identification and the contents and tell us whether you can identify the contents of Government's Exhibit No. 9 for identification? A. I can, sir. This is some papers I took off of Stephens, and at the time I received them I put

my initials and where I had taken them from on the back of the paper.

Q. And when did you take them from the person of the Defendant Stephens? A. July the 9th, 1958.

Q. And where have the contents of Government's Exhibit No. 9 for identification been from the time that you took them from the person of Defendant Stephens? A. Metropolitan Police Department, Property Clerk.

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CROSS EXAMINATION

BY MR. GARBER:

Q. Officer Mills, what time was it that you went in the premises?
A. About 2:45 p. m.

Q. And how many persons did you observe in there? A. The little girl--at the time we entered?

Q. Yes. A. The little girl first, then the Defendant Stephens and also a woman in the premises. I don't recall her name right now; I believe it was Hubert.

119 Q. There were three people there at the time? A. That is right.

Q. And could you give us a description of the layout of the premises?
A. Well, as you come in the front door, there is a living room to the left; come all the way down a little hallway and there is a dining room area which leads into the kitchen. That is where I observed the Defendant Stephens and the woman, in the dining room area.

Q. And the place, I assume, is furnished, living room furniture and dining room furniture? A. I didn't go in the living room.

Q. You went directly into the hallway and that led into the dining room? A. I did.

Q. And that was furnished with dining room furniture? A. It had a table and some dishes, yes, sir.

Q. And then there was a kitchen in the back? A. That's correct.

Q. Now you went in with Officer Foran and Officer Foulkes?
A. Yes, that is right.

Q. And I believe you testified that you were the one that arrested

Stephens and searched him, is that correct? A. With Lieutenant Foran; I searched him myself and Lieutenant Foran and I arrested him together.

120 Q. Now, have you ever seen Stephens before? A. No, sir, I hadn't.

Q. You know anything about him, knew who he was? A. No, sir.

* * * * *

Q. Officer Mills, upon entering the premises, how soon after you entered the premises did you place the Defendant Stephens under arrest?

A. As soon as I got back to the kitchen.

Q. That would be a matter of seconds? A. I mean back to the dining room. I'd say 30 - 40 seconds.

Q. And, in other words, he was the first person that you stopped or detained, is that correct? A. That is right.

Q. Now when you entered the dining room was there anything unusual, other than just plain dining room furniture, dishes? A. What do you mean unusual? I mean --

121 Q. Well, did you notice anything in sight other than normal dining room furniture and dishes and table and chairs? A. I did not.

Q. And I believe you have testified at the time you arrested Stephens he was entirely unknown to you? A. That is right.

Q. Now, did you have an arrest warrant for Stephens? A. No, sir, I did not.

Q. And you did have a search warrant for the premises I believe you testified? A. That is right.

* * * * *

Q. Now apparently no search, if any, was made of the premises until after the Defendant Stephens was arrested? A. Not to my knowledge.

MR. GARBUR: No further questions.

* * * * *

122 BY THE COURT:

Q. When you went into this dining room, or kitchen area, did she go before you or did you go before her? A. No, she was left in the

front of the room with another officer. Lieutenant Foran and I went alone.

Q. So then you went back alone? A. With Lieutenant Foran, yes, ma'am.

Q. Was the door to the dining room or kitchen open? A. Yes, ma'am.

Q. And which one of these rooms, the dining room or the kitchen, was Mr. Stephens sitting in? A. He wasn't sitting. He was going into
123 the kitchen as I entered the dining room. He hadn't got to the kitchen yet but he was going into the kitchen.

Q. Would you tell us just how you went into the kitchen? A. There is a door here leading to the kitchen. As I came in the dining room door I observed him going toward the kitchen door, leaving the dining room to go into the kitchen.

Q. And in what manner did he go? A. He went in a hurried manner.

REDIRECT EXAMINATION

BY MR. CAPUTY:

Q. Did you announce your purpose inside when you were inside?

A. Lieutenant Foran did.

* * * * *

RECROSS EXAMINATION

BY MR. GARBER:

Q. When you saw the Defendant Stephens--first saw the Defendant Stephens, was his back to you? A. It was.

124 Q. In other words, at no time did you see him face to face until after you stopped and arrested him? A. That is right.

Q. Now who went into the dining room first, you or Lieutenant Foran? A. The Lieutenant and I went in together.

Q. Just about the same time? A. Yes, I don't remember who actually was there first, but it was about the same time.

Q. When you first saw Stephens his back was to you, like this, and he was going in the kitchen? A. That is right.

MR. GARBER: That is all.

THE COURT: You say there was a woman in that house? A. Yes,

ma'am.

THE COURT: Where was she at the time? A. She was sitting-- I'm not sure whether she was sitting at a chair or whether she was standing beside a chair on the right hand side of the dining room.

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125

WARD C. FOULKES

* * * * *

DIRECT EXAMINATION

BY MR. CAPUTY:

* * * * *

Q. Now on that period, July 9, 1958, did you accompany Lieutenant Foran and Officer Mills to the premises 1547 3rd Street, Northwest? A. I did, sir.

Q. That is in the District of Columbia? A. Yes, sir.

126

Q. Now in the premises did you make the search of the premises, sir? A. I did.

Q. Did you recover any property? A. I did.

Q. Whereabouts? A. I recovered two separate groups of items, one from the dining room and the closet and the other was from the kitchen, on top of the shelves--cabinets.

MR. CAPUTY: May I have this bag and its contents, Your Honor please, marked as Government's Exhibit No. 10 for identification, and this other bag marked as Government's Exhibit No. 11 for identification?

THE COURT: Yes.

(Whereupon, Government's Exhibits Nos. 10 and 11 were marked for identification).

BY MR. CAPUTY:

Q. I show you, sir, what has been marked as Government's Exhibit No. 10 for identification, which is a bag and contents. I ask you to examine it and the contents and tell us whether you can identify the contents? A. This is assorted numbers paraphernalia, numbers slips and new regulation numbers books. I seized it from the closet and dining room of the premises.

Q. Would you look at all of the contents of Government's Exhibit No. 10 for identification and tell us whether you can identify it and how
 127 do you identify it? A. I can identify it by my initials, the date and time and where it came from. Bag of used numbers slips here. This is a book with numbers records on same. This is a shoe box with other numbers paraphernalia, identified by my initials and date and time.

Q. Is that all of the contents? A. Numbers slips, new numbers books, used numbers books and numbers records.

Q. Where was it that you first saw the contents of Government's Exhibit No. 10 for identification? A. In the closet in the dining room of 1547 3rd Street, Northwest.

* * * * *

Q. Now I show you, sir, what has been marked as Government's Exhibit No. 11 for identification. Would you examine it and tell us whether you can identify the contents? A. Yes, sir. These are new numbers books that I seized from the kitchen of that premises on top of the kitchen cabinets, and they are marked with my initials, the date and time and the address.

128 Q. Is that all one kind of--contents all the same in there? A. Yes, sir; 50 brand new regulation numbers books.

Q. Where was it that you first saw the contents of Government's Exhibit No. 11 for identification? A. On top of the kitchen cabinet in the premises 1547 3rd Street, Northwest.

Q. And where have the contents of Exhibit No. 11 for identification been from the time that you recovered them on July 9, 1958 in the premises at 1547 3rd Street, Northwest? A. They were turned into the Property Clerk of the Police Department.

MR. CAPUTY: You may examine.

CROSS EXAMINATION

BY MR. GARBER:

Q. Officer Foulkes, I believe you and Officer Foran and Officer Mills entered the premises 1537 3rd Street through the front door, is that correct? A. 1547; yes.

Q. 1547, excuse me. And who went inside the premises first?

A. Lieutenant Foran, followed by Detective Mills and myself.

Q. And yourself? Now where did Officer Mills and Foran go after they arrived inside the house? A. They went to the rear of the

129 premises. I was instructed by Lieutenant Foran to cover the front door.

Q. And you stayed at the front door? A. Yes, sir.

Q. And then you went -- then they went to the rear of the premises? A. Yes.

Q. Now I believe you stated that a search was made of the premises? A. That is right.

Q. About how long after you arrived in the premises did you begin to conduct a search? A. About 15 minutes later.

Q. About 15 minutes later? In other words, no search of any part of the premises was made at that time? A. By me.

Q. All right, and I believe you testified that you found Government's No. 10 in the closet in the dining room and Government's No. 11 on top of the kitchen cabinet? A. Yes, sir.

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130

WILLIAM D. FORAN

* * * * *

DIRECT EXAMINATION

BY MR. CAPUTY:

* * * * *

Q. Now directing your attention, sir, to July 9, 1958, in the company of Officers Mills and Foulkes did you go to the premises at 1547 3rd Street, Northwest, in the District of Columbia? A. I did, sir.

Q. And did you have a search warrant, sir? A. I did, sir.

Q. Will you tell the Court and Jury how you gained--strike it please. Did you gain admittance to the premises at 1547 3rd Street, Northwest? A. I did, sir. I went to the door of that premises; the door

131

was answered by a young girl.

Q. Did you knock on the door, sir? A. Yes. I identified myself,

showing my police badge, and notifying this young girl that I had a search warrant for gambling violations for the premises. I thereupon opened the screen door and entered the house and proceeded to the dining room, which was off of a hallway from the front entrance door, and upon entering the dining room I observed the defendant Leroy Stephens and another lady.

Q. Do you see him here in the courtroom, the defendant? A. This gentleman sitting over here, yes.

* * * * *

MR. CAPUTY: May the record show that he has pointed out Defendant Stephens, please?

THE COURT: Yes.

THE WITNESS: Mr. Stephens and another lady were hastily making exit through the kitchen door. I hauled them and then identified myself, told them that we had a search warrant for gambling violations of the premises. I turned Defendant Stephens over to Officer Mills and I interrogated the lady who was there at that time.

132 Q. Now could you tell us, sir, whether any property was recovered in the premises at 1547 3rd Street, Northwest? A. Yes, there were certain items seized from the person of the defendant and also property seized from the dining room and kitchen of that premises.

Q. And who recovered it? A. Officer Foulkes.

Q. From the premises itself and not from the person of Stephens, who recovered that? A. Officer Foulkes was assigned to make the seizure of the evidence from the premises.

Q. And did you see the property after he recovered it in the premises? A. I saw it in the premises at the time of his recovering it. I seen it later, yes, sir.

* * * * *

133 Q. Now could you tell us, sir, whether on July 9, 1958, whether you made a recordation of any dollar bills, sir? A. Yes, sir. We received the search and arrest warrant at 11:30 a.m. from the Commissioner. We proceeded from that office to the office of the Gambling and Liquor Squad, where I made a record of three one dollar bills, recording them by serial number.

Q. And did you make any recordation of any change? A. I did, sir.

Q. And what kind of recordation did you make? A. Three nickels and a dime were marked in the little "o" of the word "of" for identification.

Q. Who marked it, sir? A. I did, sir. I typed up the record sheet.

Q. Showing you Government's Exhibit No. 1 for identification, which is a slip of paper containing a recordation of dollar bills and mention of some change, did you make that up, sir? A. I did, sir. My signature appears here among the officers listed on that page.

Q. Showing you Government's Exhibits No. 2 and 3 for identification--2 being the one dollar bills and 3 being some change--I ask you to examine them and tell us whether that's the currency of which you made a recordation, sir? A. Now inside of Government Exhibit 2 we have three one dollar bills and we also have a duplicate copy of Government Exhibit 1 in that exhibit, and that is the copy on which I made the recordings of the marked money that was recovered and--

Q. Would you examine the money and the recordation that you made and tell us whether the serial numbers on the money recovered are the same as the serial numbers of the recordation that you made of the three one dollar bills? A. Yes, the three one dollar bills are the same by serial number as is listed on this sheet here, and I have in my own handwriting notation here as to where this money was recovered and by whom.

Q. Now would you place the three one dollar bills in its proper envelope and the proper exhibit number, sir? Now would you look at the envelope containing the change? Is that Government Exhibit 3?

A. That is correct.

Q. For identification. Would you examine the change and tell us whether you can identify it? A. Yes. In the word "of"--you have United States of America imprinted on this coin here, and the word--and the little "o" of the word "of," I have a mark here that I made with a knife in the Office of the Morals Division, and the same thing applies to the ten cent piece; in the little "o" of the word "of" there is an indentation that I made there with a knife.

Q. Now, on July 9, 1958, other than what is contained in Govern-

ment's Exhibit three, the dime and the nickel, did you make any marks on any other silver, sir? A. I did, sir. There were three nickels and a dime that were marked, and the nickel and the dime was all the change that we recovered.

MR. CAPUTY: At this time, your Honor please, I would like to offer Government's Exhibits No. 1, 2, and 3 for identification into evidence as Government's Exhibits 1, 2, and 3.

MR. GARBER: Going to object, your Honor. Would like to approach the bench.

* * * * *

140 MR. GARBER: Of course, as far as Stephens is concerned, he never had possession of the dollar bills so I can't raise that, but at this time as far as the coins are concerned I am now moving that they be stricken as evidence because--that their introduction in evidence be denied and all testimony concerning the three coins be stricken from the record on the ground that they were seized from Stephens in the course of illegal search of his person.

Now it has been definitely testified by Officer Mills that Stephens was searched, that these items were taken from his person, and it has been testified by Officer Mills that they went into the house pursuant to a search warrant; that Stephens was unknown to him; they didn't know any-
141 thing about him; they immediately arrested him, searched him, and then after he was arrested and searched the premises were searched and property was secured from a closet, on top of the kitchen cabinet, and Officer Mills specifically testified that there was nothing unusual about the dining room at the time he arrived, other than there was dining room furniture, normal table and chairs. There was no indication that any numbers operation was going on at the time that Stephens was arrested by the officers.

* * * * *

144 THE COURT: Now the surrounding circumstances here were that day after day and day after day the people were going in and out of there, and a man who was known to be a numbers operator was among the people

that were going there, and also this man, this defendant Stephens, was getting in a hurry to get out at this time.

MR. GARBER: Well, Mills said when he first went into the dining room that Stephens' back was turned. There was no evidence that Stephens saw Mills. He may have been going into the kitchen to get a drink of water.

THE COURT: I will overrule the objection.

MR. GARBER: Well, my objection then is to the three coins, and, of course, if other evidence is introduced I will wish to renew it.

145 THE COURT: All right.

* * * * *

MR. CAPUTY: May Government's Exhibits 1, 2, and 3, your Honor, be received into evidence?

THE COURT: Yes.

MR. CAPUTY: Government's Exhibits 1, 2, and 3.

MR. GARBER: That is over objection?

THE COURT: Yes, certainly, over your objection.

(Whereupon, Government's Exhibits 1, 2, and 3 for identification were received in evidence as Government's Exhibits 1, 2, & 3).

* * * * *

153 BY MR. CAPUTY:

Q. I show you, sir, what has been marked as Government's Exhibit No. 9 for identification, which is an envelope containing some papers. I ask you to examine the contents of the papers and tell us what they are. A. First of all, this piece of paper here contains what appears to be telephone numbers and an address. This piece of paper here has recordings on it and a code. I would term this to be a rundown tape. This is another tape with just some figures on it. I couldn't identify that. This piece of paper here has names, you will see, and some amounts of money; then it has another amount down here, 75 cents, and it is indicated leads. In the numbers business leads is a term used with refer-

ence to single betting on the first number, so that is relative to the numbers bets. Now these two pieces of paper here, we have one with the word Tuesday in the upper righthand corner, then we have a series of codes and
154 amounts listed opposite those codes, and this is what we refer to as a collection list. In other words, a control man or the backer or whoever might be responsible for collecting from these writers would have such a list as this here to indicate what the writer owed him, how much money, and of course again, as I say, it is identified by, first of all, the code, then the amount opposite that code would be the amount that they owe.

Q. Now you used the expression "a rundown tape." Would you tell the court and jury what a rundown tape is? A. In the numbers operation when the work is transmitted to the office, as I stated before, it is tabulated there by an office worker and when they tabulate that work they usually use an adding machine, and from that machine they have a ribbon which we refer to as a rundown tape or rundown ribbon, and the ribbons are sent back to the writers at some later time after the winning number has been determined, and so forth, and you would normally find the total sum of money and then a percentage is taken from that, which usually is 25 or 30 per cent, and then you will have an indication of -- as in this case Rob appears to be the writer--the indication of the writer, and then we have the sum here of 350; not clear on just what that might mean.

155 MR. CAPUTY: At this time, your Honor please, I would like to offer that exhibit, Government's Exhibit No. 9 for identification, into evidence, as Government's Exhibit number 9.

MR. GARBER: I would like to see it.

THE COURT: Certainly.

MR. CAPUTY: I would like to offer at this time Government's Exhibit No. 8 for identification, the keys.

MR. GARBER: Which one do you want to dispose of first?

MR. CAPUTY: You can look at both of them, then we will dispose of both at the same time.

MR. GARBER: Your Honor, I'm going to make an objection as far

as Government's Exhibit No. 9 is concerned, on the same ground that I made at the bench.

THE COURT: Very well.

MR. GARBER: And as far as the keys are concerned, I make the same objection as made at the bench conference.

THE COURT: Very well. The objection is overruled. Admitted.

* * * * *

BY MR. CAPUTY:

Q. I show you Government's Exhibit No. 10 for identification, the bag and its contents. I ask you to examine the contents and tell us whether you can identify the contents of Government's Exhibit No. 10 and
156 tell us what they are, sir? (A long pause).

A. This exhibit contains, first of all, these two books here; they are record books, indicating that they are used for numbers record keeping in one form or the other. Then we have here some regulation numbers books with numbers recorded in them, and we have here "Temp. K.I. 79710." Now to me that indicates that this book is kept for keeping the temporary "copy ins." "K. I." in the numbers business stands for "copy in" bets. In other words, a bettor doesn't want to be bothered playing every day, doesn't want to make contact with the writer every day, something like that, so he will put in what he calls a "copy in" bet, pay for it every month, week or whatever the arrangement might be; and we have another book with the same thing on it, "Temp. K.I. 778," and there again the same thing applies. Then we have one with 74 and 75 "Temp. K.I.," again which to me indicates the same thing. Then we have here a packet of numbers cut cards and it contains on there what the numbers are cut, the amounts, the odds which they are cut, and whether it is in combination or straight, and some other information on there that you normally find on cut cards. Here we have another cut card and some papers with numbers bets recorded on them, and we have in this envelope here some rundown ribbons and some numbers hit slips. Those are slips that indicate that a winning number has--a player has had a win, and
157 they indicate those usually by marking them. And there's other

miscellaneous papers, including regulation numbers book and numbers slips, etc., in this box here. In the bag here there is a large number of numbers slips and here we have what we refer to as the regulation numbers books, which are unused.

Q. Do you have among the objects there in Government's Exhibit No. 10 a Temp. 79 - 710, sir. A. That is correct, sir; this book here has Temp. K.I. 79 - 710.

Q. Now would you compare this Temp. 79 and 710, sir, which came out of Government's Exhibit No. 10 for identification with this Government's Exhibit 5 in evidence, property recovered from a person named Venson, and tell us whether there is any connection between both of them? A. Now this packet of slips here, which is taken from Government's Exhibit No. 5, and this book here which is taken from--I don't know the number.

Q. Government's Exhibit No. 10 for identification. A. Government's Exhibit No. 10, I can identify them by the fact that these slips here, a large number of them, not all of them but a large number of these slips bear the same book and ticket number that you have in this book here, and for comparison's sake I'll go to, for instance, this top slip here bears book and ticket number 51531-43. Here's your onion skin copy and your player's copy, and it carries on there an indication of 432-133. To me
158 that would indicate a bet on number 432 for a dollar and 33 cents.

Q. Is that the same bet on both slips, sir? A. It is, sir.

Q. Do you have any more examples like that in both exhibits?

A. Well, the next slip here is 42, the same book and ticket number, that is, the same book number; ticket number 42, and your original copy here and your duplicate copy in the book bear the same indication, 235-60, 687-30, 709-25; 41, you have the same proposition, same book number, ticket 41, and your bets on there are identical; 72, 762, 913, 930; all for ten cents.

Q. Now which is the exhibit that you took from Government's Exhibit No. 10 -- this one? A. That is it, yes.

Q. And where is the one that you took from Government's Exhibit 5? A. This one here, sir.

MR. CAPUTY: May I have this one Exhibit, your Honor, from Government's Exhibit 10 marked as Government's Exhibit 10-A, and this other one from Government's Exhibit 5 marked as Government's Exhibit 5-B, I believe?

THE COURT: Yes.

(Whereupon, Government's Exhibits 10-A and 5-B were marked for identification).

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AFTERNOON SESSION

MR. CAPUTY: At this time, if your Honor please, I would like to offer Government's exhibits 10a, taken from the premises as part of the contents of premises 1540 - 7th Street, Northeast, into evidence, and Government's exhibits 5b, which is part of the contents of the exhibit taken from the defendant Vincent.

THE COURT: Very well.

MR. CAPUTY: As Government's exhibits 10a and 5b.

THE COURT: They may be received.

(The documents referred to were marked Government's exhibits nos. 10a and 5b and were received in evidence.)

BY MR. CAPUTY:

(Direct continued of Lieutenant Foran)

Q. Now, Lieutenant, you testified to what a code is, is that correct? A. That's correct, sir.

MR. GARBER: Excuse me for interrupting, but I was in conversation with Mr. Mitchell at the time these exhibits were just offered.

THE COURT: Do you desire to see them?

MR. GARBER: I would desire to see them.

THE COURT: Very well.

(Documents were handed to Mr. Garber)

161

MR. GARBER: I am going to object to the admission of these documents at this time. There is no showing that these exhibits have anything to do with or in any way are connected with this defendant.

THE COURT: The objection is overruled. They are admitted.

* * * * *

BY MR. CAPUTY:

Q. Showing you Government's exhibit 9 in evidence, which was taken from the defendant Stevens, would you examine it and tell me whether there are code numbers in there?

MR. GARBER: Your Honor, please, I believe he has already examined those and testified--

MR. CAPUTY: This is preliminary, your Honor, for the basis of comparing with another exhibit. I am still on the direct examination of the Lieutenant.

THE COURT: Very well.

THE WITNESS: Yes, these two slips here are the slips that I previously identified as, in my opinion, would be collection lists. We have, as I stated before, the codes and the amounts of money out to the side of them.

Q. Now, would you compare those codes with Government's exhibits 5, taken from the defendant Vincent and see if there is a comparison, see if there are codes in Government's exhibit 5, and if they compare with the codes in that other exhibit, Government's exhibit 9? A. On both
162 of these lists we have code "34" listed, both here and here. I find a group of numbers slips which have writer's code "34" in the box that is normally used to put the writer's code in. On both of these slips of paper we find the code "X".

Q. From the exhibit marked what? A. From the slips of papers from Government's exhibit 9, I am speaking now of the two slips of paper in there that have the code "XX" listed on both pieces of paper, and from Government's exhibit 5, I am displaying a large group of number slips that have writer's code "XX" on same.

Now, on both of the slips from Government's exhibit 9 we have code "L" listed on both of those slips, and from Government's exhibit 5, I have here some regulation number slips with the writer's code "L" on same.

On the two slips from Government's exhibit no. 9 we find code "W"

listed on both of those slips, and from Government's exhibit 5 I have here in my hand a group of number slips which have the writer's code "W" listed on same.

From Government's exhibit 9 again, one of these slips from that exhibit, has the code "DC" listed on it, right here, the second code and from Government's exhibit no. 5, I have in my hand a group of number slips which have writer's code "DC" listed on the same.

163 From Government's Exhibit 9, the two slips of paper again, with the Code No. 1 on same, here we have "No. 1," and I have from Government's Exhibit 5, a package of numbers slips with "No. 1" listed on same.

On Government's Exhibit 9, one of these slips of paper has the Code No. 3 on it, "No. 3," and from Government's Exhibit 5, I have in my hand a package of numbers slips with "No. 3" recorded on same.

From Government's Exhibit No. 9 again, the one slip of paper with the Code D-45 on same. You can see it right there, and an amount. From Government's Exhibit 5 I have here a packet of number slips that have the Code D-45 on same.

From Government's Exhibit 9 again, on both slips of the paper we find "R" and a symbol for a number, and then "4" on both of these slips of papers, "R" and then the symbol for number and "4".

From Government's Exhibit 5, I have in my hand a packet of numbers slips with "R", a symbol for number, and "4" again. Those are all the comparisons that I make from what I have in front of me.

Q. Would you put the contents in the respective exhibits, please? Now, to you, Lt. Foran, as an expert in the operation and conduct of a numbers game, do the similarities in the codes in Government's Exhibit

164 9, which was taken from the defendant Stevens at the time of his arrest, the similarity in those code numbers with the code numbers in Government's Exhibit 5, taken from Vincent at the time of his arrest, do they, to you, have any significance or indicate anything?

MR. GARBBER: I will object to that.

MR. CAPUTY: He is an expert, your Honor. He can tell us.

* * * * *

165 MR. CAPUTY: May he answer the question?

THE COURT: Yes.

* * * * *

THE WITNESS: Yes. It would indicate to me that the records were pertaining to one operation.

BY MR. CAPUTY:

Q. Showing you what has been marked as Government's Exhibit 11 for identification, would you examine the contents, sir, and tell us what they are? A. This exhibit contains a large quantity of what we call the regulation numbers books.

MR. CAPUTY: At this time, if your Honor please, subject to counsel seeing them, I would like to offer Government's Exhibit 11 for identification into evidence.

THE COURT: Do you desire to examine them?

MR. GARBER: May we approach the bench?

THE COURT: Yes.

(AT THE BENCH:)

MR. GARBER: Mr. Mitchell and myself have examined the contents of these items marked Government's Exhibit 11. There is nothing written on them. They are just standard ordinary receipt books which could be used for any purpose. I submit they have no probative value as far as this case is concerned. Anybody can have them.

* * * * *

167 MR. CAPUTY: May they be received in evidence as Government's Exhibit No. 11?

THE COURT: Yes, they are admitted.

(In open court.)

THE COURT: Government's Exhibit No. 11 may be admitted in evidence.

(Government's Exhibit No. 11 was received in evidence.)

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170

CROSS EXAMINATION

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175

BY MR. GARBER:

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MR. CAPUTY: Before he starts, I see it is not in evidence. May I offer Government's Exhibit No. 10 in evidence? I thought I had. May I offer it at this time?

THE COURT: Yes, it is admitted.

(The document referred to, previously marked Government's Exhibit 10 for identification was received in evidence.)

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MR. CAPUTY: At this time the Government rests, your Honor.

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MR. GARBER: Now, the defendant Stevens is named in three counts of this indictment, counts number one charging operating, counts number fourteen, charging the maintenance and permitting of gambling on the premises of 1547 - 3rd Street, Northwest, and the sixteenth count, possession of numbers paraphernalia.

191

I again would like for the record to renew my motion that all of the evidence which the officers testified was seized from Stevens should be suppressed and ruled out of this case on account his arrest being illegal, and the search of his person was also unlawful for the reasons I stated at the bench at the time the exhibits were offered.

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THE COURT: Very well. We will take a five minute recess. I overruled the motions.

* * * * *

MR. GARBER: Your Honor, on behalf of the defendant Stevens we rest our case. For the purpose of the record I renew the motions made at the close of the Government's case.

* * * * *

201

Washington, D. C.
Wednesday, February 11, 1959

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* * *
(At the Bench:)

THE COURT: Is there anything that you wish to submit?

MR. GARBER: As I announced at the conclusion of the Government's case, and when I rested my case, I renew my motion for judgment of acquittal.

THE COURT: Very well.
* * * *

[Filed February 18, 1959]

MOTION FOR JUDGMENT OF ACQUITTAL,
n.o.v. OR FOR A NEW TRIAL

The defendant, Leroy Stephens, moves the Honorable Court for a judgment of acquittal, n.o.v. or in the alternative, a new trial as to Count Sixteen (16) of the Indictment, and as reasons therefore, states as follows:

1. The Court erred in denying defendant's motion for judgment of acquittal made at the conclusion of the evidence.
2. The verdict is contrary to the weight of the evidence.
3. The verdict is not supported by substantial evidence.
4. The Court erred in denying defendant's motion to suppress evidence.
5. The Court erred in the admission of physical evidence against the defendant during the trial.

/s/ William J. Garber
Attorney for Defendant

[Certificate of Service]

[Filed June 22, 1959]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

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Washington, D. C.

Friday, April 10, 1959

Before Judge BURNITA SHELTON MATTHEWS on defendant's motion for judgment of acquittal n.o.v. or for new trial; sentencing.

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MR. GARBER:**

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The proceeding today is a motion for judgment of acquittal n.o.v. or in the alternative for a new trial. At this time I am going to address myself to the motion for a new trial, on the ground that there was error in the admission of physical evidence against the defendant, namely, certain papers, notations and records that were seized from his person at the time of his arrest, on the ground that they were in violation of his rights under the Fourth and Fifth Amendments to the Constitution.

Now, as the Court will remember, there was a great deal of testimony by officers of the Morals Division, the Gambling and Liquor Squad of the Metropolitan Police Department, concerning a suspected numbers operation that was being carried on at premises 1547 Third Street, Northwest, in the District of Columbia.

3

Several officers testified as to having observed certain persons in picking up paper bags, and following these persons to various parts of the city, and that each time they would enter premises 1547 Third Street, Northwest, and leave.

Now on the date of the arrest, which was July 9th, 1958, Officers Mills, Foulkes, and Foran went to premises 1547 Third Street, Northwest, after the initial groundwork and the initial investigation was made by other officers. I believe it was Mills or Foulkes who knocked on the front door and were admitted by a child into the premises. They described the premises as being a home. And upon entering the dining room of the premises they saw the defendant Stephens and another woman.

Now if the Court will recall the testimony, at no time was the defendant Stephens ever mentioned or ever identified by any officers of the Morals Division of the Metropolitan Police Department, until the raid of July 9th, 1958, when Officers Mills, Foran and Foulkes entered the premises of 1547 Third Street, Northwest.

The crucial point which I feel arises in this case involves what the officers observed upon entering those premises. Officer Mills and Officer Foulkes were questioned.

THE COURT: You want to leave out all they observed before that day, do you?

4 MR. GARBER: Yes, because I don't think that applies to this defendant; and I will develop that later on in my argument. When they went into those premises, in substance it was described as a private home, with the normal furniture that you would find in any house.

When they went into the dining room they observed the defendant Stephens. They stopped him. They searched him. And they found the papers, tapes and other writings which were introduced into evidence over objection.

And then officer Foulkes and Officer Mills testified that subsequent to the search and the arrest of the defendant Stephens, they made a search of the premises. And in a closet in the dining room, and on top of a shelf in the kitchen, they found certain paraphernalia, which consisted largely of what was described as regulation numbers books.

Now it is the contention of the defendant Stephens in this case that though there may have been probable cause --and we will concede for the sake of argument that there was probable cause -- to get a search warrant for these premises, there was no probable cause to arrest the defendant, who up until that time was a total stranger and was unknown to have had any connection with this operation. For all they knew, he could have been a visitor, he could have been a relative, he could have been a salesman, he could have been there for some other purpose other than a purpose having to do with this operation that was described in Court.

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8 Now in this present situation the police officers had a warrant for the search of premises 1547 Third Street, Northwest, and they entered those premises. But when they entered those premises, the situation there was not the situation that it was in the Wyche case. No activity was going on to lead those officers to suppose that a numbers operation was going on, then and there. Therefore, how could they say that they had probable cause to arrest the defendant Stephens in this case, who was never previously identified? And on the basis of the testimony from that stand, he was never mentioned as having anything to do with this suspected operation.

THE COURT: My recollection of this is that the police had been watching this house for a long time, and that regularly at certain periods in the day people would go in there with these little brown bags, and they would then come out again.

MR. GARBER: That is correct.

THE COURT: And that this had been going on for a long time, and under such circumstances as to indicate that there was some sort of numbers operation going on in that house.

And then they had this search warrant, and they go to this place. And my recollection -- and I may be wrong -- but my recollection is that when they got to this place they found the defendant, Mr. Stephens, and
9 a woman and a little girl.

Is that right?

MR. GARBER: That is correct. They were in the house.

THE COURT: And they found something, wasn't it, in the kitchen?

MR. GARBER: That was after they had searched Stephens. Officer Foulkes testified that it was subsequent to their stopping Stephens and searching him that they made the search of the premises. And they did not find any paraphernalia in that premises until after they had made the search and arrest of Stephens.

That certainly is not the Wyche case, which I am sure the Government is going to rely on today, because that is the case they normally

rely on in this type of a situation. But I think the Wyche case has to be viewed on its own facts.

THE COURT: Well, I think this one has to, too.

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- 11 MR. GARBER: So, Your Honor, on the basis of those two cases, that is my argument. I submit that this search and seizure from the defendant Stephens, and his arrest, were in violation of his rights under the Fourth Amendment, and that the evidence introduced over his objection was erroneously introduced. And I ask the Court at this time to grant a new trial and to order that that evidence be suppressed.

THE COURT: Did you make a motion to suppress before trial?

MR. GARBER: I did, Your Honor.

THE COURT: Who heard it?

MR. GARBER: That was heard before Judge Letts. Judge Letts denied that motion because Mr. Caputy raised the argument that the affidavit wasn't sufficient to give the defendant standing, because the defendant didn't allege ownership in the articles.

My argument was that you can not only allege ownership, but you can allege possession, because certainly in a case of larceny a thief cannot have title; but still if the articles which he is alleged to have stolen are seized from his person by an illegal search and seizure, they certainly should be suppressed. But on that basis the motion was denied.

- 12 I did raise it again prior to trial. And, as I remember, the motion was argued at the time of the reception of the evidence. And I renewed my motion again after the trial.

THE COURT: I will hear Mr. Caputy briefly. What case is it that you are relying on?

MR. CAPUTY: I still rely on the Wyche case, if Your Honor please. And I don't think that the Di Re case applies here at all.

THE COURT: Doesn't the Wyche case say something about if the police arrive with a search warrant and they find some indication in the house, that then they can arrest anybody --

MR. CAPUTY. -- in the premises or anybody who comes in the premises.

In this case here, if Your Honor please, when the police went to the premises at 1547 Third Street, they were admitted by a 13-year-old girl. This defendant Stephens and the defendant Hunt ran into the kitchen. The police were there with a duly issued warrant, properly executed. And they have a right, if Your Honor please, to execute that search warrant.

Now when these two individuals ran into the kitchen, what were the police to do? They had a right to stop them. And, having a right to be in the premises, they also have a right to search anybody in the premises, particularly under these circumstances that they ran. And then they recovered from this defendant Stephens code books which were similar in number to the code books that were in the possession of Venson.

THE COURT: Yes, I remember all that. I am trying to find out what you had before the arrest.

MR. CAPUTY: Yes. We had a duly issued search warrant, properly executed, and these two defendants running into the kitchen arrested by the police.

Now if they had not run, they would have searched the premises immediately. But they ran, and they had to stop them, if Your Honor please. And they caught them in the kitchen and searched them, and simultaneously searched the premises. And this individual had keys, which keys fitted the door, and he also had marked money.

I think the Wyche case still applies, certain aspects of it, if Your Honor please.

MR. GARBER: Your Honor, may I make this one comment on the basis of what Mr. Caputy says? I do not remember anything in the testimony as to the defendant Stephens running into the kitchen.

As I remember the testimony of Officer Foulkes, and Mills, when he entered the dining room Mr. Stephens was going into the kitchen. His back was turned. And I asked Officer Foulkes when was the first time he saw Mr. Stephens face to face. And he said it was after they stopped him and told him to stop; and Stephens stopped and he turned around. I don't think there is anything in the testimony that says he was running into the kitchen.

MR. CAPUTY: Well he wasn't running, if Your Honor please, then they were moving fast. As soon as they came in there, they were moving fast into the kitchen. They might not have used the word --

THE COURT: The kitchen was the place where they found the numbers, wasn't it?

MR. CAPUTY: Yes, Your Honor.

MR. GARBER: Also in the dining room, Your Honor, in the closet.

THE COURT: Well, Mr. Garber, I am denying your motion.

ON SENTENCING

Mr. Stephens, will you step forward, please.

Do you want to say anything?

* * * *

15 THE COURT: Leroy Stephens, have you anything to say?

THE DEFENDANT: No, ma'am.

* * * *

[Filed April 10, 1959]

NOTICE OF APPEAL

Name and address of appellant

Leroy Stephens, 1774 Lang Place, N. E., Washington, D. C.

Name and address of appellant's attorney

William J. Garber & Meredith C. Coffman
424 Fifth Street, N. W., Washington 1, D. C.

Offense Possession of numbers slips

Concise statement of judgment or order, giving date, and any sentence

\$500.00 fine and nine months imprisonment, April 10, 1959.

Name of institution where now confined, if not on bail

In custody of U. S. Marshal

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

Date: April 10, 1959

/s/ Leroy Stephens, Appellant
/s/ William J. Garber
/s/ Meredith C. Coffman
Attorneys for Appellant

[Filed August 21, 1959]

UNITED STATES DISTRICT COURT
for the
DISTRICT OF COLUMBIA

Commissioner's Docket No. 7
Case No. 67

UNITED STATES OF AMERICA	)	
v.	)	SEARCH WARRANT
premises: 1547 3rd st. N.W.	)	
(entire premises)	)	
Washington, D. C.	)	
phone listed to: Alfred E. Williams	)	

To Chief of Police or Any Member of the Metropolitan Police, D. C.

Affidavit having been made before me by Pvts. Julious Durham, Elsworth Dory and Samuel E. Carter, Morals Div. MPDC that he has reason to believe that on the premises known as 1547 3rd st., N.W. - entire premises - Washington in the District of Columbia there is now being concealed certain property, namely lottery tickets, lottery policies or any book, paper, memorandum or device used in setting up, promoting or maintaining a policy lottery. The facts to sustain this are as set forth in the affidavit attached hereto and made a part hereof, which are in violation of the D.C. Code, Title 22, Sections 1501 and 1502 and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the premises above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the place named for the property specified, serving this warrant and making the search in the daytime and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and

bring the property before me within ten days of this date, as required by law.

Dated this 9th day of July, 1958

[SEAL]

/s/ James F. Splain
U. S. Commissioner

RETURN

I received the attached search warrant July 9, 1958, and have executed it as follows:

On July 9, 1958, at 2:45 o'clock P.M., I searched (the person)
(the premises)
described in the warrant and

I left a copy of the warrant with Leroy Stephens together with a receipt of the items seized.

The following is an inventory of property taken pursuant to the warrant;

A large quantity of number slips, number books, numbers run-down tapes and related numbers records, and paraphernalia.
\$788.10 in cash from Leroy Stephen's person.

1 Nickle & 1 Dime marked as evidence from the person of
Leroy Stephens

This inventory was made in the presence of Leroy Stephens, Det. W. C. Foulkes and Pvt. J. B. Mills.

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

/s/ Sgt. William D. Foran

Subscribed and sworn to and returned before me this 11 day of
July, 19

/s/ James F. Splain
United States Commissioner

AFFIDAVIT

Statement of facts relative to the request for a U. S. Commissioner's Search and Arrest Warrants for violations of the Gambling Laws of the District of Columbia.

Search Warrants:

1235 E Street Northeast, Washington, D. C. (entire premises)
telephone service listed to Mrs. Rebecca Davis.

1547 3rd Street Northwest, Washington, D. C. (entire premises)
telephone service listed to Alfred E. Williams.

Arrest Warrants:

Moses Adolphus Taylor, colored male, 65 years old, 5'8-1/2" tall,
about 160 lbs.

Rebecca Frances Davis, colored female, 44 yrs. 5' 3-1/2" tall,
about 160 lbs.

John Doe #one, colored male about 6' tall, 215 lbs. about 35 years
old, and medium dark brown skin.

Affidavit:

Having received information that numbers were being written in
the premises 1235 E Street, Northeast, Washington, D. C. Pvt. Elsworth
Dory was sent to make an investigation. As the case developed Pvt.
Julious Durham and Pvt. Samuel E. Carter, Morals Division MPDC was
assigned to assist Pvt. Dory in the investigation.

Between the hours of 10:00 a.m. and 12:30 p.m. on the following
dates Pvt. Elsworth went to the premises 1235 E. Street Northeast and
made numbers bets with Moses A. Taylor, April 28, 1958, April 29,
1958, May 7, 19, 23, and May 27, 1958. On each of these dates Taylor
wrote the bets on a regulation numbers book and gave Pvt. Elsworth
Dory a receipt. Pvt. Dory then paid him with money taken from advanced
MPDC funds and then departed the premises.

On May 7, 1958 during the time Pvt. Dory was in the premises
1235 E Street Northeast, he observed Rebecca F. Davis to take some
numbers bets from an unidentified female, about 12 or 13 years of age.
She was observed to write the bets on a regulations numbers pad.

About 12:20 p.m. May 20, 1958 Pvt. Dory went to the premises
1235 E Street Northeast and there he contacted Rebecca F. Davis and
made 22 numbers bets with her totaling up to \$3.55, Pvt. Dory then paid
Rebecca Davis \$3.55 taken from advanced MPDC funds and then left the
premises.

About 12:45 p.m. June 2, 1958 Pvt. S. E. Carter and J. Durham observed Taylor to depart 1235 E Street Northeast with bulging pockets. He was then observed to get on a Street Car at 13 & D streets, N.E. and was then followed to the 1500 block of New Jersey Ave., N.W., where he was observed by Pvts. Durham and Carter to depart a Street Car with his pockets still bulging. He was then observed to walk to and enter 209 P Street, N.W. He was observed to depart 209 P street, N.W. at 2:00 p.m. pockets still bulging and was observed to walk to and enter 225 Bates street, N.W., where he departed shortly pockets still bulging. He was then observed by Pvts. Carter and Durham to walk to and enter 1547 3rd street, N.W. from the rear with bulging pockets at 2:05 p.m. He departed these premises in 10 minutes minus the bulging pockets. A number of other unidentified colored males were observed to enter these premises with bulging pockets and to remain shortly and to leave minus the bulges between 2:05 and 2:30 p.m.

About 10:45 a.m. June 3, 1958 Pvt. Dory went to the premises 1235 E Street Northeast and made 16 numbers bets with Moses A. Taylor totaling up to \$1.40 Taylor wrote the bets on a regulations numbers pad and gave Pvt. Dory a receipt. Pvt. Dory then paid Taylor \$1.40 taken from advanced MPDC funds and then departed the premises. About 12:45 p.m. same date Pvts. Durham and Carter observed Taylor to depart the premises 1235 E Street Northeast with bulging pockets. He was then observed to get on a Street Car at 13 & D street Northeast and then was followed to the 1500 block of New Jersey Ave. Northwest, where he departed a Street Car with pockets still bulging and at 1:10 p.m. was observed to enter 209 P street, N.W. He was observed by Carter and Durham to depart 209 P street at 1:55 p.m. pockets still bulging and then was observed to enter 225 Bates street, N.W., where he remained about 5 minutes and was then observed to depart the premises, pockets still bulging and was then observed to walk to and enter the premises 1547 3rd street, N.W. at 2:05 p.m. using the rear entrance. He remained in these premises about 10 minutes and then was observed to depart minus the bulge. A number of other unidentified people were observed to enter the premises 1547 3rd street, N.W. and to leave shortly.

About 11:45 a.m. June 6, 1958 Pvt. Dory went to the premises 1235 E street, N.E. and contacted Taylor again. On this date Dory made 13 numbers bets with Taylor totaling up to \$1.15. Taylor wrote the bets on a regulations numbers pad and gave Pvt. Dory a receipt from same. Pvt. Dory then paid Taylor \$1.15 taken from advanced MPDC funds. The number 777 hit on this date and at 10:30 a.m. June 7, 1958 Taylor paid Pvt. Dory \$135.00 for a 25 cents hit that Pvt. Dory had with him on June 6, 1958.

About 1:50 p.m. June 16, 1958 Pvts. Durham and Carter observed Taylor to enter 225 Bates street, N.W. carrying a brown paper bag in his right hand. He remained in these premises about 10 minutes and then was observed to depart still carrying the paper bag. Taylor was then observed to walk to and enter 1547 3rd Street, N.W. with the bag at 2:00 p.m. He remained in these premises in about 10 minutes and then was observed to depart minus the bag. At about 2:30 p.m. same date John Doe #1 was observed to enter 1547 3rd street, N.W. from the rear carrying a large brown paper bag. He was observed to depart these premises in about 10 minutes still carrying the large brown paper bag, which appeared to be larger than it was when he entered the premises. He was then lost from observation.

About 11:05 a.m. June 17, 1958 Pvt. Dory went to the premises 1235 E street, N.E. He again contacted Taylor and made 13 numbers bets with him totaling up to \$1.15. Taylor wrote the bets on a regulations numbers pad and gave Pvt. Dory a receipt. Pvt. Dory then paid Taylor \$1.15 taken from advanced MPDC funds. About 1:10 p.m. same date Pvt. Durham observed Taylor to depart the premises 1235 E street, N.E. with bulging pockets. He was then observed to get on a Street Car at 13 & D streets N.E. and was followed to the 1500 block of New Jersey Ave. N.W., where he was observed to depart a Street Car, pockets bulging. Taylor was then observed by Pvt. Durham to so walk to and enter the premises 209 P street, N.W. at 1:40 p.m. About 1:55 p.m. same date Taylor was observed by Pvt. Durham to depart the premises 209 P street, N.W. pockets still bulging. He was then observed to enter 225 Bates street,

N.W., where he remained shortly and departed with pockets still bulging. He was then observed to walk to and enter 1547 3rd Street, N.W. at 2:05 p.m. pockets still bulging. He departed these premises in about 10 minutes minus the bulging pockets. About 2:30 p.m. same day John Doe #1 was observed to enter the premises 1547 3rd street, N.W. from the rear. He was observed to depart these premises in about 10 minutes carrying a large brown paper bag and was lost from observation.

About 12:00 noon June 18, 1958 Pvt. Dory went to the premises 1235 E street, N.E. and again contacted Taylor. On this date Dory made 13 numbers bets with Taylor totaling up to \$1.00. Taylor wrote the bets on a regulations numbers pad and gave Pvt. Dory a receipt. Pvt. Dory then paid him \$1.00 taken from advanced MPDC funds and then departed the premises.

About 12:40 P.M. same date Pvts. Carter & Durham observed Taylor to depart the premises 1235 E St. N.E. with bulging pockets. He got on a streetcar as on previous dates and was followed to the 1500 blk. of New Jersey Ave. N.W. He was then seen to enter 1505 4th St. N.W. pockets still bulging. At 1:55 P.M. same day Pvts. Carter & Durham observed Taylor to enter the premises 1547 3rd St. N.W. with bulging pockets. He departed the premises in 15 minutes minus the bulge. At about 2:15 P.M. same date Pvts. Durham & Carter observed John Doe #1 to enter 1547 3rd St. N.W. carrying a large brown paper bag. He remained 10 minutes and departed the premises still carrying the bag, he was then lost from observations.

About 1:30 P.M. June 19, 1958 Pvts. Durham & Carter observed Taylor to enter the premises 225 Bates street N.W. with pockets bulging, where he departed shortly pockets still bulging and was seen to walk to & enter the alley behind the 200 blk. of P St. N.W. and was lost from observations. About 2:05 P.M. Taylor was observed to enter 1547 3rd St. N.W. with bulging pockets. He departed these premises in about 10 minutes minus the bulge. About 2:20 P.M. same day John Doe #1 was observed to enter 1547 3rd St. N.W. carrying a bag. He was observed to depart at 2:35 P.M. still carrying something partly concealed.

About 11:30 A.M. June 20, 1958 Pvt. Dory went to the premises 1235 E St. N.W. and there he contacted Taylor and made 13 number bets with Taylor totaling up to \$1.20. Taylor wrote the bets on a regulation numbers pad and Pvt. Dory paid him from advanced MPDC funds. The number 014 hit on this date and Taylor paid Pvt. Dory \$27.00 for a 5 cent hit on 014 on Sunday June 22, 1958.

About 10:00 A.M. June 27, 1958 Pvt. Elsworth Dory went to the premises 1235 E St. N.E. and contacted Taylor again and made the 12 number bets with Taylor totaling up to \$1.10. Taylor recorded the bets on a regulation numbers pad and gave Pvt. Dory a slip from the same pad. Pvt. Dory then paid his money taken from advance MPDC funds. About 1:15 P.M. same day Taylor was observed by Pvts. Carter & Durham to depart the premises 1235 E St. N.E. with bulging pockets and seen to board a streetcar at 13th & D St. N.E. At 2:00 P.M. same day, Taylor was observed to enter the premises 1547 3rd St. N.W. pockets still bulging. At 2:15 P.M. Taylor was observed to depart the premises minus the bulging pockets. At 2:25 P.M. same day John Doe #1 was observed to enter 1547 3rd St. N.W. from the rear carrying a large brown paper bag. At 2:30 p.m. same day John Doe #1 was observed to depart the premises 1547 3rd St. N.W. minus the large brown paper bag.

About 11:45 A.M. July 2, 1958 Pvt. Elsworth Dory went to the premises 1235 E St. N.E. and there he contacted Moses A. Taylor and made 10 number bets with Taylor totaling up to \$1.15. Taylor recorded the bets on a regulation number pad and gave Pvt. Dory a receipt from same. Pvt. Dory then paid him money taken from advance MPDC funds and left the premises.

About 2:10 P.M. July 3, 1958 Pvt. Carter & Durham observed Taylor to enter the premises 1547 3rd St. N.W. with bulging pockets. At 2:20 P.M. Taylor was observed to depart 1547 3rd St. N.W. minus the bulging pockets. A number of other people were observed to enter these premises with pockets bulging and leave shortly minus the bulge, including William Proctor who was arrested in January 1958 for operating a lottery. Proctor was observed to climb over the rear gate when he

entered the premises. About 2:25 P.M. same date John Doe #1 was observed to enter 1547 3rd St. N.W. with bulging pockets from the rear. At 2:35 P.M. same date John Doe #1 departed the premises 1547 3rd St. N.W. with extremely bulging pockets and was seen to catch a cab in the 100 blk. of N St. N.W.

About 2:12 P.M. July 7, 1958 Pvts. Carter & Durham observed Taylor to enter the premises 1547 3rd St. N.W. with pockets bulging. He was observed to depart the premises at 2:20 P.M. minus the bulge. A number of other unidentified colored males were also observed to enter the premises from the rear with bulging pockets and to depart shortly minus the bulge including William Proctor. At about 2:25 P.M. same date John Doe #1 was observed to enter the premises 1547 3rd St. N.W. from the rear carrying a large brown paper bag. At 2:35 P.M. same date John Doe #1 was observed to depart the premises with the brown paper bag which appeared to be much fuller. He was lost from observation in the 200 blk. of P St. N.W.

About 11:05 a.m. July 8, 1958 Pvt. Elsworth Dory went to the premises 1235 E Street, Northeast and contacted Moses A. Taylor. Pvt. Dory made 10 numbers bets with Taylor, totaling up to \$1.00. Taylor recorded these bets on a regulations numbers pad and gave Pvt. Dory a receipt. Pvt. Dory then paid Taylor \$1.00 taken from advanced MPDC funds. About 2:05 p.m. same date Pvts. S. E. Carter and J. Durham observed Taylor to enter the premises 1547 3rd Street, Northwest with bulging pockets. Taylor was observed to depart the premises at 2:20 p.m. minus the bulging pockets. William Proctor and a number of other unidentified colored males were observed to enter the premises 1547 3rd Street, N.W. with bulging pockets and to leave shortly minus the bulges. About 2:30 p.m. same date John Doe #1 was observed by Pvts. Carter and Durham to enter the premises 1547 3rd street, N.W. carrying a brown paper bag. About 2:40 p.m. same date John Doe #1 was observed to depart 1547 3rd street Northwest carrying a larger paper bag and was lost from observation at New Jersey Ave. and O street, N.W.

Moses A. Taylor and Rebecca F. Davis have been previously arrested and charged with violations of the gambling (numbers) laws.

It is the firm belief of the undersigned officers that the persons named or described in this affidavit are at the present actively engaged in the operation of a lottery, known as the numbers game. Further, where brown paper bags and bulging clothing are mentioned that they contain numbers slips and related numbers paraphernalia. Further it is the firm belief of the undersigned officers that there is now concealed in the premises 1235 E street Northeast, Washington, D.C. and 1547 3rd Street, Northwest, Washington, D. C. numbers slips, records, and related numbers paraphernalia necessary in conducting the operation of a lottery which is contrary to and in violation of the gambling laws of the District of Columbia.

/s/ Elsworth Dory
Elsworth Dory, Pvt., MPDC

/s/ Julious Durham
Julious Durham, Pvt., MPDC

/s/ Samuel E. Carter
Samuel E. Carter, Pvt., MPDC

Sworn to and subscribed in my
presence this 9th day of July, 1958

/s/ James F. Splain
U. S. Commissioner for the District of Columbia.
